

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF WALLA WALLA

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DONALD COLEMAN and SUE WRIGHT, : Case No. 18-2-00404-8  
individuals, and THE HAWK HILL :  
ASSOCIATION, a corporation, :  
: :  
Plaintiffs, : :  
: TRANSCRIPT  
vs. : :  
: OF  
DICK COOK, JOHN CRESS, MARIE :  
EVANS, RAY GOFF, DAVE GULLO, : MOTIONS FOR  
RON HINES, JIM MURPHY, CASSIE : SUMMARY JUDGMENT  
SIEGAL, and SCOTT TOWSLEE, :  
individuals, and THE VILLAGES :  
OF GARRISON CREEK MASTER :  
PROPERTY MANAGEMENT :  
ASSOCIATION, a corporation, :  
: :  
Defendants, :

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PLACE: Walla Walla County Courthouse  
315 West Main Street  
Walla Walla, WA 99362

DATE: April 25, 2024

**BEFORE :**

HON. BRANDON L. JOHNSON, J.S.C.

**TRANSCRIPT ORDERED BY:**

BERTHA B. FITZER, ESQ. (FoxBallard, PLLC)

**APPEARANCES:** (Continued)

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APPEARANCES:

MICHAEL E. DE GRASSE, ESQ.  
Attorney for the Plaintiff.

BERTHA B. FITZER, ESQ. (FoxBallard, PLLC)  
Attorney for Defendants The Villages of  
Garrison Creek Management Association.

YVONNE M. BENSON, ESQ., (Gordon Thomas Honeywell,  
LLP),  
Attorney for Defendants Dick Cook, John Cress,  
Marie Evans, Ray Goff, Dave Gullo, Ron Hines, Jim  
Murphy, Cassie Siegal, and Scott Towslee.

1 (Proceedings commence at 1:38 p.m.)  
2 THE COURT: Good afternoon, everyone.  
3 ATTORNEY: Good afternoon, Your Honor.  
4 THE COURT: We are here on Coleman, et al. v.  
5 Cook, et al., 18-2004048 is our cause number. We have  
6 a number of competing motions that have been filed.  
7 The Court intends to allow everyone to argue so the  
8 order is not all that important to the Court. If  
9 counsel has a preference, we can certainly address  
10 that.  
11 Let's make sure that our technology is  
12 working as it should. Ms. Fitzter, can you hear th  
13 Court. That's not a good sign. Ms. Fitzter, are you  
14 able to hear us? Ms. Benson, are you able to hear the  
15 Court.  
16 MS. BENSON: Yes, I can hear the Court just  
17 fine. Thank you. Can the Court hear me?  
18 THE COURT: Yes, we can. Thank you, Ms.  
19 Benson.  
20 MS. BENSON: Great. I will send Ms. Fitzter a  
21 message that the Court cannot hear.  
22 THE CLERK: The microphone just came on.  
23 MS. FITZER: Can the Court hear me now?  
24 THE COURT: Yes, we can. Can you hear us,  
25 MS. Fitzter?

1 MS. FITZER: Yes, I can. I'm sorry, I had to  
2 switch speakers.  
3 THE COURT: No, don't apologize. If that's  
4 the biggest technology issue we have of the day, I'll  
5 be a very happy individual.  
6 Okay. Mr. DeGrasse, any preference on what  
7 order we take the various motions?  
8 MR. DE GRASSE: Well, as a matter of logic  
9 and chronology, I suggest we take the plaintiff's  
10 motion for summary judgment first. It was filed first.  
11 And, clearly, in the plaintiff's view, it should be  
12 granted and if it's granted, then the other motions  
13 would necessarily be denied.  
14 THE COURT: Okay. That's fine. I don't have  
15 any problem with that.  
16 MR. DE GRASSE: So, if the Court please, my  
17 name is Michael DeGrasse. I am the lawyer for the  
18 plaintiffs in this case. Seated next to me at counsel  
19 table is Don Coleman, one of the plaintiffs. And the  
20 plaintiffs have moved for partial summary judgment  
21 seeking an order of this Court under Rule 56 holding  
22 the defendants liable and damages for breaching their  
23 duty as a homeowner's association, the MPMA, and as  
24 individual directors of that association for failing to  
25 maintain common areas.

1           The common areas in question with respect to  
2 this motion are the traffic control gates in the  
3 Villages of Garrison Creek that are at either end of  
4 Cress Lane Drive.

5           The duty is clear. It's set forth in the  
6 governing documents; the bylaws, the articles, and the  
7 CCRs, all of which are summarized in this case by the  
8 first declaration of Donald Coleman, and reiterated in  
9 the attached declaration from Douglas Botimer that  
10 shows that the defendants have a duty to maintain  
11 common areas. No question about that.

12           Clearly, they are legally bound to maintain  
13 common areas as they have done and as they continue to  
14 do with respect to every common area within the  
15 Villages of Garrison Creek except the traffic control  
16 gates.

17           Now, this seemed to be of little or no  
18 concern until about 2015 or 2016 when some individuals  
19 like Donald Coleman began to wonder what was going on  
20 with Phase 9, with Palish development which is another  
21 aspect of this case, and raising questions about that.

22           At that time, it became very evident that the  
23 board was predisposed against those individuals most of  
24 whom lived in the Phase 10 also known as Hawk Hill. So  
25 they began to refuse to pay maintenance expenses for

1           the gates. And on and on it went. Finally, we are  
2 back on remand to consider the various claims of  
3 damages brought by the plaintiffs. The particular one  
4 here is simply beyond legal or factual dispute.

5           The initial response was, well, they're not  
6 common areas. Those gates are private property. They  
7 are privately owned. Never mind we never found a  
8 private owner, never found any evidence of private  
9 ownership, never found any individual or other entity  
10 who asserted that yeah, that's my stuff, those gates  
11 belong to me.

12           To the contrary, each and every time we made  
13 a move to explore this method, more evidence developed  
14 that these gates area, in fact, common areas  
15 culminating most recently with a declaration from  
16 Miranda Stroble, a homeowner, a member of the reserve  
17 committee, not a resident of Hawk Hill, who did the  
18 research, concluded yeah, they're common areas and the  
19 MPMA has a duty to pay for their maintenance.

20           It's beyond dispute. It is simply beyond  
21 dispute. A blind person could tell that those gates  
22 are on common ground and they are commonly used for the  
23 benefit of all the villages. These are not private  
24 little backyard gates. These restrict traffic flow  
25 from the City of College Plays to Myra Road, and they

1 are there to reduce the wear and tear on all streets  
2 within the Villages of Garrison Creek and to reduce  
3 traffic in the form of non-villages of Garrison Creek  
4 residents who would take shortcuts down Cress Lane  
5 Drive to get to Myra Road.

6 So this specious assertion that some of these  
7 benefit only the private homeowners in Hawk Hill or  
8 Phase 10 is just that; it's just another story made up  
9 to try to justify their lame response as a homeowners's  
10 association and as directors.

11 Moreover, again, unrebutted, there are common  
12 assets or common areas that are maintained in  
13 accordance with the governing documents by the MPMA  
14 that rather clearly do benefit only a handful of  
15 villages' residents, and we saw that in the declaration  
16 of Mr. Botimer. We saw that in the recent declaration  
17 of Mr. Coleman; pocket parks that are grassy, lovely  
18 areas, totally enclosed by one phase, not accessible at  
19 all by any other resident of non-villages except the  
20 village surrounding the pocket park in particular are  
21 and have been maintained as common areas.

22 They are designated as common areas. They  
23 have been paid for without dispute as common areas,  
24 forever. Even though unlike the traffic control gates  
25 on Press Lane Drive which benefit everyone, these

1 common areas, at least arguably benefit, only the  
2 individual residents that surround the pocket parks.  
3 Nevertheless, they're paid for as common assets as part  
4 of the common areas, and we're not disputing that.  
5 They should be. All common areas must be paid for in  
6 their maintenance by the MPMA. That's what the  
7 governing documents require. And it's no secret these  
8 items have been part of the budget forever.

9 Now, we've had a little hair-splitting here,  
10 a little exercise in hyper-technicality between the  
11 so-called operating budget and the so-called reserve  
12 budget but the budgets -- the budget, and as Mr.  
13 Strobel explains in his declaration, as Mr. Coleman  
14 shows in his declaration, and as the attached documents  
15 from the auditor shows, these assets, traffic control  
16 gates, pocket parks, irrigation equipment, a host of  
17 things have all been maintained continuously, budgeted  
18 for, paid for, reserved for as common area assets from  
19 the initial operation of this homeowner's association.

20 So, we have a duty, common areas must be  
21 maintained. We have a question, what are the common  
22 areas? Are the traffic control gates common areas?  
23 Indeed they are, always have been. Nobody can dispute  
24 that. Have they been paid for? They have not. Thus,  
25 damages.

1 Now, to show how the defendants themselves  
2 have undercut their own position here, one need only  
3 read the declaration of Linda Olson that was filed in  
4 this case on March 28th and if I may approach, I'll  
5 hand up a copy.

6 THE COURT: I actually have one right here.

7 MR. DE GRASSE: All right. This has to do  
8 with the question of the character of the gates and the  
9 MPMA's dealing with them as a common asset or not.

10 On Page 2, Paragraph 8, I'm reading from Ms.  
11 Olson's declaration.

12 "If it is decided that the gates are part of  
13 the common areas, we will need to increase dues by the  
14 other homeowners in the Villages of Garrison Creek to  
15 bring the amount in reserve current. We also need a  
16 vote by all the members." And it goes on.

17 There's a concession there that these are  
18 common areas. There's no longer an assertion that  
19 they're private. But more important, the latest  
20 fiction offered in defense is that somehow the MPMA has  
21 decided to allocate expenses of common areas among the  
22 various villages, and therefore, their refusal to pay  
23 for the traffic control gates in Phase 10 is the result  
24 of a discretionary decision that the MPMA made to  
25 require residents of Phase 10 only to pay all the

1 expenses of the gates.

2 Well, what I just read from Ms. Olson shows  
3 that's bunk. There was no decision, discretionary or  
4 otherwise, ever made to require Phase 10 residents to  
5 pay for those gates. The MPMA and the defendant  
6 director simply refused to pay in retaliation for all  
7 the questions that Mr. Coleman and Phase 10 residents  
8 have raised over the past several years. That's it.

9 Mr. Botimer, who probably has more history  
10 with respect to this development than anyone,  
11 unequivocally says in his declaration, those gates are  
12 common areas. Those gates should be paid for by the  
13 MPMA. There's no rationale. There's no justification  
14 to do otherwise.

15 And the shifting stories here simply belie  
16 this, again, shifting position of, well, the gates are  
17 common -- or I'm sorry, the gates are not common. The  
18 gates are private or we as a board exercised our  
19 discretion and decided we're going to allocate  
20 expenses. Never mind such a decision has never been  
21 made, not only with respect to the traffic control  
22 gates, but with respect to any other common asset.

23 There is zero history of that, and for good  
24 reason, because the governing documents don't allow it.  
25 Amounts of assessments can be made and adjusted but

1 common areas have to be paid for. They have to be paid  
2 for. And it's to benefit the entire villages all  
3 together. That is the legal requirement of the  
4 governing documents. That has been the unwavering  
5 practice, except with respect to this issue that is  
6 relatively recent.

7 So the story that it's private doesn't hold  
8 up. The story that we exercised our discretion and  
9 decided we're not going to pay for those doesn't hold  
10 up. The damages are clear. The legal duty is clear.  
11 This motion should be granted.

12 THE COURT: Thank you, Mr. DeGrasse. As  
13 between Ms. Benson and Ms. Fitzler, the Court has no  
14 preference in terms of who goes first. I plan to let  
15 you both argue. Oh, I think you're on mute, Ms.  
16 Fitzler. You'll have to unmute yourself.

17 MS. FITZER: Can you hear me now?

18 THE COURT: Yep, we sure can.

19 MS. FITZER: Okay. I believe I'm going  
20 first, and I will respectfully disagree as to virtually  
21 everything that counsel has said, and rather than give  
22 a lot of verbiage, I want to show you why counsel is  
23 wrong.

24 First of all, there is an issue that we had  
25 resolved, which is the motion to strike Attachment A,

1 which is the Haner letter, and we can resolve that  
2 later but I am going to with the Court's permission  
3 going to refer to at least the attachment to it, which  
4 would not have any of the objections that counsel had  
5 raised to that.

6 I want to start with -- and can -- is the Court  
7 able to see my slide presentation?

8 THE COURT: Yes.

9 MS. FITZER: Okay. All right. So we start  
10 with the obvious. This is the Village of Garrison  
11 Creek. And you'll notice that none of these other  
12 homes -- this is in the area next to the gazebo. None  
13 of these other homes have gates or are part of the  
14 gated community.

15 Counsel has made a number of representations  
16 about what the governing documents do and do not say,  
17 and his interpretation of them. With due respect, my  
18 interpretation, Mr. DeGrasse's interpretation, Mr.  
19 Coleman's interpretation, and Mr. Bodemaker's  
20 interpretation are totally irrelevant. It is a  
21 question of law for the Court to decide what these  
22 governing documents do or do not permit.

23 Once you decide that, if you decide the Court  
24 acts within the authority of those documents, then you  
25 have to determine whether or not that, in fact, is a

1 reasonable exercise of their discretionary authority  
2 within the governing documents.

3 And to do that, you then look to the language  
4 in the case that plaintiff cited, the case that cited  
5 in my brief, for the proposition that in order to  
6 defeat that discretion, you have to show fraud,  
7 dishonesty, or incompetence.

8 Plaintiff has not in any way, shape, or form  
9 met their burden on any of either resisting our motion  
10 or in making this motion. We start with the village,  
11 and then we come to the governing documents. The one  
12 that the plaintiff cites are the bylaws. The purpose  
13 of the association is to own, develop, and maintain all  
14 common areas within the Village of Garrison Creek, and  
15 to administer, as necessary, the rules and regulations  
16 which pertain to the enforcement of the covenants,  
17 conditions, and restrictions which apply to the  
18 villages.

19 Then you go to the articles of the  
20 corporation. The MPMA is tasked with managing the  
21 affairs, using assessments to pay for the common good,  
22 expenses, and services, to contract with professionals,  
23 to sell, rent, lease, convey, and cover vantage real or  
24 personal property of every kind and description. I  
25 want you to remember that Item 4 as we come back to why

1 the Olson's declaration is not any type of concession.

2 Number 5 is to make and carry out contracts  
3 to exercise all power necessary or convenient to effect  
4 any and all purposes for which property management is  
5 organized.

6 Article 10 of the articles of the corporation  
7 governs monthly assessments for common expenses and  
8 accrual of assessments. The sums required by the  
9 association for expense as reflected by the budget and  
10 any supplemental budgets shall be divided into  
11 installments to be paid monthly or otherwise divided by  
12 the board over the period of time covered by the budget  
13 and by each owner.

14 Let me stop there and note that there is no  
15 citation to a reserved budget. Counsel is absolutely  
16 incorrect when he says that the association has paid  
17 for these dates traditionally and just changed when  
18 they began to raise concerns.

19 Next, allocation among subdivisions or  
20 villages shall be established by the board of  
21 directors. Assessments within each village shall be  
22 equal between lots and/or family units. Remember that  
23 language as well when we get to discussing Phase 9 in  
24 our motion for summary judgment.

25 Article 7C of the articles of the

1 corporation, each separate village delineated by  
2 subdivision or division within the planned unit  
3 development shall govern and control issues that are  
4 distinct to that particular village or that are  
5 delegated to it by the association.

6 So let's talk a little bit about the layout.  
7 Phase 10 is in the orange and the gates in question,  
8 Your Honor, appear -- can you see my pointer?

9 THE COURT: Yes.

10 MS. FITZER: Up here and down here. This is  
11 the whole area totally encompassing Phase 10.

12 Now, plaintiff's argument is that because it  
13 secures the traffic going through here, which, by the  
14 way, is all part of Phase 10, then there's no bypass  
15 going out this way.

16 Well, yeah, that may be true, except people  
17 come this way instead. So they're not saving any wear  
18 and tear except for the Phase 10 dedicated road.

19 Now, what does having a gated community do  
20 for you? A gated community means that people can't  
21 roll up to your house like they can in front of any of  
22 the other places with a U-Haul while you are in Arizona  
23 getting a sunburn. And if you notice Mr. Coleman's  
24 declarations, all three of them were signed in Yuma,  
25 Arizona. Yes, he has a very specific benefit from this

1 setup with the gates.

2 Their argument for this being a common area  
3 is that this piece of land right here is common area.  
4 Therefore, they reason that the gates themselves as --  
5 which were added after that, those also must be common  
6 area.

7 Now, what is interesting is what they didn't  
8 produce. And the reason I mention the Hainer letter is  
9 because attachment to the Hainer letter is a 2004  
10 dedication of common areas by the developers to the  
11 MPMA. And what plaintiff has never produced for the  
12 Court is any kind of similar dedication of those gates  
13 to the MPMA. There is a mechanism for making property  
14 and for infrastructure common areas, and that  
15 mechanism, Your Honor, is a dedication of it, a passing  
16 over from the developer to the association.

17 And the only evidence in the record is that  
18 the developer turned over these gates to Phase 10. And  
19 part of what has been presented through the prior  
20 motion for summary judgment and this motion for summary  
21 judgment is that Phase 10 controls those gates.  
22 They've been paying for the electricity. They've been  
23 -- they've got the codes. And Mr. Coleman responds  
24 during his deposition, "Yeah, we'll give the codes to  
25 anybody who asks for them."

1 Well, what does that sound like? That sounds  
2 like Mr. Coleman and Phase 10 are controlling these  
3 gates.

4 In addition, it is very, very clear that up  
5 until 2015, Phase 10 was maintaining these gates  
6 themselves and treated them as if they were their own  
7 property. And Mr. Coleman and Mr. Botimer have been on  
8 record at annual meetings demonstrating and saying that  
9 these gates belong to Phase 10. Where is that produced  
10 for you?

11 Plaintiff Coleman was in fact the president  
12 from 2011 to 2014. I've provided you with the annual  
13 meeting that took place in 2012, both the minutes and  
14 an attachment. What you should understand is that  
15 Attachment 1, which we're going to look at in a minute,  
16 says that it was discussed specifically at this  
17 meeting.

18 You can look at those meeting minutes, and  
19 you will also see that Mr. Botimer is at that meeting.  
20 You will also see that the budget was voted on by all  
21 of the membership, and nowhere in that budget was  
22 expenses of -- for the gates.

23 How do we know that? Because we look at  
24 attachment 1. Attachment 1 is this discussion of all  
25 of the different relationships. You probably remember

1 this from the last summary judgment hearings, that in  
2 fact this sets out that those other villages were part  
3 -- the ones that exited were not part of the Villages  
4 of Garrison or the MPMA, and it also sets out a quote.

5 And then now to make it easier to see, this  
6 is that language that appears at the bottom of the  
7 previous slide. "Common areas. Infrastructure and  
8 improvements are maintained with funds collected from  
9 members. Generally speaking, common areas include all  
10 areas and improvements that are not privately owned  
11 properties. Note: Phase 10 owns and maintains the  
12 gates."

13 This is Mr. Coleman in 2012, as president of  
14 the MPMA, representing to the entire membership at an  
15 annual meeting where Mr. Botimer is president, that  
16 these gates are owned and maintained by Phase 10 yet  
17 counsel gets up and tells you it is beyond dispute that  
18 these are common areas and that there is a duty to  
19 maintain them.

20 Your Honor, what is beyond dispute is that  
21 these gates benefit Phase 10, that they have been  
22 conditionally paid for, and the representations have  
23 been made repeatedly, and these gates belong to Phase  
24 10, and they have significant benefit to Phase 10.

25 There was also, even earlier, and this is

1 where it's submitted as part of the prior sets of  
2 summary judgment back in 2022, I believe it was, there  
3 were questions and answers in 2005 between Mr. Botimer  
4 and the association. And again, there is the  
5 discussion of these belonging to Phase 10.

6 Now, I'm going to stop sharing for a second.  
7 Hopefully, if I know how to do that. Well, we could --  
8 all right.

9 So, the argument is no dedication to the  
10 MPMA, a tradition of in fact, and admission, really  
11 from Mr. Coleman in 2012 that they belong to the MPMA.  
12 Then you have the fact that all of the primary benefit  
13 -- now, they're calling this traffic control gates.  
14 The documents that they submitted refer to them as a  
15 Phase 10 gate. This traffic control gate is language  
16 that they've just brought up now.

17 Your Honor, I believe that the correct  
18 interpretation of the governing documents is that the -  
19 - even if these were common areas, the association  
20 could delegate that under Article 10 to the phase that  
21 primarily benefitted them

22 So, even if they are common areas, even if  
23 you can get past the fact that they have not produced  
24 any type of dedication of those gates to the MPMA, you  
25 can still get to it by saying to summary judgment in

1 favor of the association and the individual defendants  
2 by saying, okay, if they're common areas, does the  
3 association have the authority to delegate it to the  
4 diligent primary benefits, and I've walked you through  
5 those different areas of the governing documents that I  
6 believe control.

7 I think I want to end this portion of my  
8 argument of this issue with the language of Ben Gerger.  
9 Ultimately, the board has consistently decided that  
10 after the use-based fees have been charged, the  
11 remaining balance should be raised by assessments  
12 allocated equally to each lot, and those decisions have  
13 been ratified by the vote of the members.

14 What's important here is that in that  
15 situation, the Court is saying, okay, they've got the  
16 authority and the way they exercise the authority was  
17 ratified. It is important to note that every single  
18 budget, which includes the expenses that homeowners  
19 have deemed are appropriate has been ratified by the  
20 homeowners at the annual budgets.

21 So today's wanting suddenly to impose these  
22 costs of these gates on the plaintiff -- or on the  
23 remaining members of the association, that's just not  
24 consistent.

25 The last sentence, absent a showing of fraud,

1 dishonesty, or incompetence that decision will be not  
2 deserved [sic]. And I would put to you, Your Honor,  
3 this. Mr. Coleman clearly represented to the associate  
4 -- the homeowners that the gates belong to Phase 10.  
5 Did he commit fraud when he did that? Was he being  
6 dishonest when he did that? Was he being incompetent  
7 when he did that?

8 No, he wasn't. He was following the natural  
9 order of things, and -- but up until 2015, everyone  
10 operated that way.

11 Now, the last point I want to make is this.  
12 The reason why the declaration, Paragraph 8 is there is  
13 that plaintiff really needed to be careful about what  
14 they're asking for. Because if they're saying that  
15 these are common areas and that the association has to  
16 pay for their maintenance, then the association and the  
17 membership, the other, you know, 200-some-odd pieces of  
18 property, those members can say, you know what, we  
19 don't want to pay for those gates. We don't want to  
20 replace those gates. And the authority of the  
21 governing documents allows them to dispose of those  
22 gates.

23 And is that something that Mr. Coleman and  
24 Mr. DeGrasse have talked to all the other members of  
25 Phase 10 about. Because you need to be careful what

1 you ask for. If these are common property, then the  
2 association can control them, and that can include  
3 taking them out.

4 This seems -- there seems to be some  
5 misconception that they're going to get money from some  
6 insurance contract or some other way of, you know,  
7 recouping these expenses, and apparently, all the way  
8 back to 2013. And that truly is mind-boggling, Your  
9 Honor. The invoices that we attached to the  
10 declaration show that they want their electricity paid  
11 for all the way back to 2013 at a time when Mr. Coleman  
12 was president and not collecting any dues or including  
13 in the budget the cost of maintenance for these gates.

14 That doesn't make sense, Your Honor. And I  
15 believe some rejection should be -- plaintiff's motion  
16 should be denied, and defendant's motion on this issue  
17 should be granted. Thank you.

18 THE COURT: Thank you, Ms. Fitzer. Before I  
19 hear from Ms. Benson, I do have one question though.  
20 You've argued that because there was not a formal  
21 dedication of the gates to the MPMA, that the MPMA does  
22 not own them.

23 If there was no dedication to the MPMA and  
24 there was no formal dedication to Phase 10 or Hawk  
25 Hill, who would own the gates then today? Would those

1 still be owned by the developer?

2 MS. FITZER: There was an informal  
3 dedication. The handoff went from the developer to  
4 Phase 10. It never went to the association.

5 THE COURT: Okay. Thank you, Ms. Fitzer.  
6 Ms. Benson, whenever you are ready.

7 MS. BENSON: Great. Thank you, Your Honor.  
8 My name is Yvonne Benson, and I represent the  
9 individual defendants. They are Dick Cook, John Cress,  
10 Marie Evans, Ray Goth, Dave Golu, Ron Hines, Jim  
11 Murphy, Cassie Siegal, and Scott Towsley.

12 Plaintiffs intentionally and consistently  
13 refer to defendants in the whole. This motion against  
14 the individual defendants is not well-founded in fact  
15 or law. The Court of Appeals gave Mr. DeGrasse  
16 specific direction and said that they had to prove that  
17 the individual defendants violated the prior statute,  
18 the 86th statute of RCW 24.03-127.

19 That chapter imposes upon the individual  
20 defendants, when they were serving on the board, an  
21 obligation to act in good faith and with such care,  
22 including reasonable inquiry, as an ordinarily prudent  
23 person would do under the circumstances.

24 They haven't established who was on the board  
25 when. Seven of the nine defendants are no longer on

1 the board and have not been on the board in quite some  
2 time. Five of the individual defendants don't live in  
3 the VGC. In fact, for example, Ron Hines moved out --  
4 moved in 2018 and sold his home at that time. Jim  
5 Murphy does not live in the VGC. Cassie Seagle does  
6 not live in the VGC.

7 They have not established that any action  
8 with regard to the gates was taken in bad faith. Zero.  
9 Nothing as to the individual defendants.

10 Further, as set forth in our briefing, the  
11 individual defendants are immune from decisions because  
12 they were volunteers under the governing documents.  
13 And plaintiffs, in their opposition to our summary  
14 judgment, don't dispute that individuals are immune  
15 under the governing documents. They're also immune  
16 under the business judgment rule.

17 So they can't have it both ways. You don't  
18 get to sue them in their individual capacity or, if  
19 you're saying it's on -- as the board, the Court of  
20 Appeals specifically told them what they needed to  
21 prove. There's nothing setting forth bad faith as to  
22 relation of the gates. They keep bulking people in  
23 together, which is improper and frankly lazy.

24 And so they've been advised of this more than  
25 once, and they fail to address it. There's no basis

1 for liability for the individual defendants on this  
2 issue. And, to the extent the Court finds that there  
3 is any piece on the MPMA, they're immune under the  
4 governing documents in view of their service and under  
5 the business judgment rule on how they collect. And so  
6 we incorporate Ms. Fitzer's argument and request that  
7 plaintiffs' books should be denied to the individual  
8 defendants.

9 And does Your Honor you have any specific  
10 questions as to any of them?

11 THE COURT: I do not at this time, Ms.  
12 Benson. Thank you very much.

13 MS. BENSON: Thank you.

14 THE COURT: Mr. DeGrasse, if you'd like to  
15 give your rebuttal on this issue.

16 MR. DE GRASSE: Yes.

17 THE COURT: And if you wouldn't mind, would  
18 you start by addressing Ms. Benson's argument on the  
19 individual versus the MPMA as it relates to the  
20 plaintiff's motion for partial summary judgment on the  
21 gates?

22 MR. DE GRASSE: Yes. The case was remanded  
23 for determination of questions of damages with respect  
24 to all defendants. There is the institutional  
25 defendants, the corporate defendants, the MPMA. With

1 respect to the individual defendant, there is no doubt  
2 that they were serving on the board as directors during  
3 the time the issues based -- or from which the  
4 complaint arises occurred.

5 Where they live now or what they do is  
6 irrelevant. There's never been a dispute that these  
7 people were integrally involved as directors of the  
8 corporation, and that's why they're here. They are  
9 named as directors of the corporation.

10 There was an earlier suggestion by Ms. Benson  
11 that somehow we're trying to impose personal liability  
12 on these people. We're not. We're trying to impose  
13 liability on them as individual directors, individual  
14 members of the board of directors. That's what this  
15 case is all about.

16 These issues -- the claims arose during the  
17 time these people were on the board. That's why  
18 they're lumped together. So the liability is plain,  
19 and it's also clear that they are not immune. There is  
20 no immunity these people enjoy. There is, I agree, an  
21 indemnification provision in the articles of  
22 incorporation. It's a question of indemnity is based on  
23 somebody doing something wrong. No one is conceding on  
24 the other side that they're doing anything wrong.

25 The question of indemnity doesn't arise.

1 Furthermore, there is an issue of bad faith here, and  
2 that obviates any question of indemnity, and it  
3 certainly obviates any question under the Business  
4 Judgment Rule.

5 Bear in mind that the Court of Appeals, in  
6 the Bangerder case held that the Business Judgment Rule  
7 doesn't apply to homeowner associations, and that  
8 holding was left undisturbed in the partial affirmation  
9 and partial reversal by the Supreme Court in Bangerder.

10 So there's simply no basis for the argument  
11 asserted here by the individual defendants.

12 THE COURT: What is the bad faith --

13 MS. BENSON: Your Honor --

14 THE COURT: -- as it relates to the gates?

15 MR. DE GRASSE: That there was simply no  
16 basis for refusing to pay for the gates except  
17 retaliation as described in the papers submitted by Mr.  
18 Coleman and in his declaration. They decided, that is,  
19 the individual defendants in the MPMA, when questions  
20 began to be raised about Phase 9 and Palish homes, and  
21 other questions, that they were not going to pay for  
22 the gates.

23 THE COURT: So is it your position that the  
24 MPMA did pay for the gates until 2015?

25 MR. DE GRASSE: I believe the evidence is

1 that they did. There is no evidence that Phase 10 did.  
2 Phase 10 did not. The gates -- and I agree, it's not  
3 altogether clear who paid for them, but it was clearly  
4 not a private expense that was shouldered by Phase 10,  
5 and Mr. Coleman's declaration I think makes that  
6 crystal clear in Paragraph 6 of his initial declaration  
7 supporting the motion.

8 The MPMA has a history of budgeting for and  
9 maintenance and repair of the traffic control gates  
10 until 2020. And that is reinforced by the declaration  
11 of Douglas Botimer, who says the defendants as  
12 directors of the MPMA have refused to pay for the  
13 maintenance and operation costs of the gates on Cress  
14 Line Drive. As the gates were part of the common  
15 areas, the MPMA should be responsible for cost of their  
16 maintenance and operation.

17 And that combination was observed and should  
18 continue.

19 THE COURT: How do you rectify or square Mr.  
20 Botimer's statement in his declaration with his prior  
21 statements that would indicate that the gates were the  
22 responsibility of Phase 10 alone?

23 MR. DE GRASSE: Well, he was wrong. And  
24 these were discussions, and that's all they were.  
25 These were not modifications of the governing

1 documents. These were not items in the budget.  
2 Remember, we've had audit papers and reserve budget  
3 descriptions, all of which were part of the budget.  
4 This hypertechnical distinction between the operating  
5 budget and the reserve budget is specious. These have  
6 been clearly stated as components of the MPMA budget  
7 for years and years.

8 And it doesn't make any difference what  
9 somebody says about them without a modification of the  
10 fundamental governing documents. Again, to advert to a  
11 remark made by Ms. Fitzer, the dedication of property  
12 in a planned unit development has to do with real  
13 estate. It doesn't have to do with equipment or assets  
14 that are then created. In fact, when a declaration is  
15 made and the plat is formed, usually all that's there  
16 is empty land.

17 And I would also like to point out that the  
18 map does not show -- the map was entered by Ms. Fitzer  
19 in one of her slides. It does not show all the  
20 surrounding houses to the north and east of Phase 10,  
21 residents of whom use Cress Line Drive as well. Cress  
22 Line Drive is not a simple driveway for people who live  
23 a line. It ends in College Place. College Place  
24 residents from the entire city of College Place would  
25 otherwise use Cress Lane Drive to go down Cress Lane

1 Drive and out east to Myra Road.

2 So the benefit is to the entire community,  
3 not simply Phase 10.

4 THE COURT: How do you address the argument --  
5 -- Ms. Fitzer's argument that Article -- I believe it  
6 was Article 12, Subpart C of the Articles of  
7 Incorporation allows the board to allocate common  
8 expenses between the phases?

9 MR. DE GRASSE: It says what it says. And  
10 what I'm saying is first of all, that's never happened.  
11 All common expenses have been paid totally and  
12 uniformly without allocation among phases. It has  
13 never been the practice to this day from the beginning  
14 to allocate expenses.

15 So it's not something that's been done, and  
16 it hasn't been done and it's no defense now.

17 Now, I'm not saying it couldn't happen next  
18 year or tomorrow --

19 THE COURT: Well, couldn't you argue that --

20 MR. DE GRASSE: -- but it hasn't happened  
21 today.

22 THE COURT: -- the votes that were done in  
23 the past where the documents Ms. Fitzer had on the  
24 screen that show the comments that say, hey, this is  
25 Phase 10 -- the gates are the responsibility of Phase

1 10. Is -- could that not be viewed as an allocation  
2 that the board made and everyone agreed?

3 MR. DE GRASSE: I don't think it was even  
4 done as a result of any board action, Your Honor. I  
5 just don't think the record will support that. These  
6 are remarks that were made and documents that were  
7 generated, but they're not part of the formal governing  
8 documents in the CCRs which are crystal clear about the  
9 responsibility of the MPMA and its directors to pay for  
10 everything.

11 THE COURT: But we just agreed, though, that  
12 the governing document would not need to be modified.  
13 You were just saying the language is there, it just  
14 hasn't been utilized.

15 MR. DE GRASSE: Okay. No. I concede that.  
16 What I'm saying is on that specific subpoint, that  
17 hasn't occurred. In other words, there has never been  
18 resolutions by the board that we are now going to stop  
19 that will allow us to allocate all the expenses of the  
20 pocket seven -- I'm sorry, the Phase 7 pocket parks to  
21 Phase 7. And we are going to allocate all the expenses  
22 of the irrigation equipment to Phase 5. It's just not  
23 happened, Your Honor.

24 THE COURT: Right. It would take a separate  
25 action to do that.

1 MR. DE GRASSE: It takes action. You can't  
2 just orally later say well, yeah, they said that back  
3 then and there's a note of it or here's something in  
4 the minutes, particularly when it's refuted by  
5 submissions here.

6 THE COURT: So how does the Court rectify it?  
7 Because I have you, Mr. DeGrasse, telling me the MPMA  
8 has always paid for the gates, and I have counsel for  
9 the defense saying, well, that's not true from -- it  
10 was universally recognized and understood that Phase 10  
11 and Hawk Hill own the gates, at least until, you know,  
12 2015 was the earliest at which point that ever became  
13 an issue.

14 MR. DE GRASSE: Well, where are the checks?  
15 Where are the bills? Where is the evidence of any  
16 payment by Phase 10 in those years? Where is it?

17 THE COURT: Well, I'm --

18 MR. DE GRASSE: Our conclusion is it didn't  
19 happen.

20 THE COURT: Well, I'm --

21 MR. DE GRASSE: And then the budget  
22 documents, the reserve fund, if Phase 10 were paying  
23 for all these things and if all these gates were solely  
24 the responsibility of Phase 10, why year after year do  
25 we have audited financial statements showing monies in

1 reserve for the maintenance, repair, or replacement of  
2 those gates. And those documents are attached and part  
3 of the record here. There's no dispute about it.

4 THE COURT: Well, I'm not cutting you off.

5 MR. DE GRASSE: No, I understand.

6 THE COURT: I'll let you argue more if you  
7 need to. Ms. Fitzer, I would like to while this is  
8 freshly in the Court's mind, could you respond to the  
9 same question the Court asked Mr. DeGrasse in terms of  
10 who paid these and how do I square this on a motion for  
11 summary judgment when I'm being told different things  
12 or at least arguably different things? And you're on  
13 mute against you'll have to unmute yourself.

14 MS. FITZER: Yes, Your Honor. I can answer  
15 that question and I can answer it by telling you that  
16 there is virtually an admission that Phase 10 was  
17 paying for it. It appears as a attachment to Olson  
18 declaration in support of our response, and it is an  
19 invoice that was sent by Mr. Coleman to the MPMA, and  
20 that invoice says that they are collecting money for  
21 Phase 10 mailboxes for Phase 10 gates, CenturyLink  
22 phone service 2012 to 3/20 -- or 3/2018.

23 And that demonstrates that fact that they  
24 need it and now they're trying to collect it from the  
25 association again on electricity the dates 1/2013 to

1 2/2023, repairs Phase 10 gates, 12/2012 to 2/2023.

2 This is a document prepared by Hawk Hill by -  
3 - sent by Mr. Coleman to the association indicating  
4 that they want to be reimbursed for expenses that they  
5 spent on the gates.

6 THE COURT: Okay. Thank you, Ms. Fitzer.  
7 I'm going to ping pong right now and go right back to  
8 Mr. DeGrasse. So for the record, we're looking at  
9 Exhibit 2 to the declaration of Linda Olson that was  
10 filed on April 15th.

11 How do you respond, Mr. DeGrasse? If MPMA  
12 had paid the money, why would Hawk Hill send an invoice  
13 to MPMA asking for reimbursement?

14 MR. DE GRASSE: All right, Your Honor. The  
15 question here is who is responsible and who paid before  
16 this time. Early on. This is more recent, and they  
17 have not paid. They have paid some but not all and  
18 clearly, Ms. Fitzer is correct. These were paid --

19 THE COURT: They being Hawk Hill.

20 MR. DE GRASSE: -- by Phase 10. Yes.

21 THE COURT: Okay.

22 MR. DE GRASSE: They did. And they asserted  
23 their claim and have been denied.

24 THE COURT: Okay. So do we have agreement  
25 then that Hawk Hill was paid for the gates, the

1 electricity, and the repairs from at least 2012 on?

2 MR. DE GRASSE: I think -- the short answer  
3 is the invoices are correct. At the same time, so is  
4 the budgeted items that we claim show responsibility on  
5 the part of the MPMA. The budget items, line items,  
6 budget documents, 2015 and '16 were adopted by the MPMA  
7 but then the money didn't come. So the responsibility  
8 was there based on their documents but the payments did  
9 not occur.

10 THE COURT: So why wouldn't that be brought  
11 up in a timely fashion? Why wouldn't that be brought  
12 up in 2013, let's say. If we have an invoice from  
13 December 2012, why wouldn't your client and other folks  
14 in Phase 10 be getting excited and saying, hey, wait a  
15 second, you budgeted this money and we're paying it.  
16 Why aren't we being reimbursed. Why would we wait  
17 years.

18 MR. DE GRASSE: Well, I'm not so sure it  
19 wasn't brought up. It depends on which part of the  
20 record you want to look at, Your Honor, and I think the  
21 record will show that it was.

22 THE COURT: I will note that toward the  
23 bottom of that invoice under a heading note/terms, it  
24 says, "This invoice is for reimbursement of MPMA common  
25 area expenses, which have been previously paid by the

1 Hawk Hill Association."

2 MS. BENSON: Your Honor?

3 THE COURT: Yes.

4 MS. BENSON: May I just jump in one point on  
5 the individual defendants to address what Mr. DeGrasse  
6 said?

7 THE COURT: Yes, please.

8 MS. BENSON: Thank you. The Court of Appeals  
9 didn't just say it's remanded on issues of damages.  
10 They were clear what plaintiff had to show and  
11 plaintiff has the burden of establishing -- and I put  
12 it in my briefs. The Court of Appeals gave him  
13 direction and he ignored it. He had to establish the  
14 existence of the duty, a breach of that duty, resulting  
15 damages, and that the claim breach was proximate cause.

16 He nonchalantly said with regards to the  
17 gates Botimer, well, he was wrong. There's no evidence  
18 that they breached their duty to act in good faith  
19 before this Court or that there was a proximate cause  
20 of damages. You don't just get a skip over the  
21 malfeasance part that the Court specifically told him  
22 he needed to address and that we put in our briefing as  
23 well and gave him the opportunity to.

24 So he just keeps stomping his feet with the  
25 same conclusory allegations. It's been six years to

1 come up with it, and there's no evidence of bad faith  
2 on behalf of my clients because they didn't act in bad  
3 faith. And I just want to reiterate that I believe  
4 it's very important that the individual defendants that  
5 plaintiff's motion be denied as to them.

6 THE COURT: Okay. Thank you, Ms. Benson.  
7 Mr. DeGrasse, do you have any additional argument on  
8 this motion before we shift gears?

9 MR. DE GRASSE: I think the covered the point  
10 that there was never an formal declaration -- I don't  
11 even understand what that could possibly be. There's  
12 no evidence that these are anywhere but on common area  
13 land and common areas are clearly the responsibility of  
14 the MPMA.

15 THE COURT: All right. Thank you, Mr.  
16 Degrass.

17 Okay. I think what I would what I would like  
18 to do is move our argument now to the defendant's  
19 motion for summary judgment. And I will begin with Ms.  
20 Fitzer, I believe, unless you and Ms. Benson have a  
21 different arrangement.

22 MS. FITZER: No, Your Honor. That is the  
23 arrangement we have.

24 THE COURT: Okay. Whenever you are ready  
25 then.

1 MS. FITZER: Your Honor, the beginning and  
2 the end of this argument really is with the Court of  
3 Appeals' decision. I tried to get my briefing to set  
4 these areas of concern out of the -- and I put it into  
5 three main categories. The first is whether or not  
6 they can from the board -- and by the way, the fellow  
7 members of the association collect past amounts due  
8 that -- from the exodent properties. That would be the  
9 nursing home. That would be the Walla Walla Housing  
10 Authority. That would be the commercial property. And  
11 that would be Mr. Botimer's property.

12 And the Court of Appeals instructed all of us  
13 that in order to go forward on that claim that it may  
14 be that the MPMA acted for the benefit of the  
15 homeowners by not suing to force one or more phases to  
16 pay assessments and/or common expenses.

17 We know that the MPMA's president in 2018  
18 stated his belief that the lawsuit to enforce such  
19 payments would be unsuccessful due to several years of  
20 MPMA's acquiescence.

21 Also, for Coleman to recover assessments and  
22 common expenses not collected by the MPMA, the non-  
23 paying phases like -- the three years before filing,  
24 Coleman would need to establish that MPMA would have  
25 been successful enforcing non-paying phases to pay.

1 This could be difficult.

2 So where is the evidence that they could  
3 collect? They go back to this black and white  
4 interpretation of the governing documents. And they  
5 say, well, you can't extinguish the obligation.  
6 Therefore, they are running covenants. Therefore, we  
7 win. Skipping over the Court of Appeals mandate that  
8 they prove that there would be a success in collecting  
9 after all these years.

10 And the evidence is that the nursing home and  
11 Walla Walla Housing Authority never collected, never  
12 charged them. And the developers, both in the  
13 commercial property and in Mr. Botimer's property, they  
14 basically said, you know what, there's been a  
15 recession, you know, post-housing crash, bubble burst.  
16 So, in 2010, 2011, they just said, no, we're not going  
17 to pay. And Mr. Botimer and the other developers  
18 controlled the board until the time of the absence.

19 What does that mean? That means that you  
20 could not move forward with an action to collect during  
21 the time when then they were, in fact, in control. So  
22 they would avoid -- they could avoid any type of action  
23 by the board by simply not showing up for a meeting. If  
24 you don't show up for meeting, there's no quorum. No  
25 quorum, no action.

1 This would have been a very easy fix.  
2 Apparently, Mr. Coleman has a good relationship with  
3 Mr. Botimer. If he wanted to prove collectability, at  
4 least as to Botimer's properties, he could have  
5 produced a declaration to Mr. Botimer that says, oh, by  
6 the way, if I'm asked -- even if I'm asked now, I will  
7 come forward with those past dues.

8 There's no declaration there. And we all  
9 know why there's no declaration because Mr. Botimer  
10 would never, ever sign that declaration. He may sign  
11 one that, you know, verbatim says what the complaint  
12 says but he's never going to -- he's a smart business  
13 man. And he didn't sign that until after he got his  
14 signed agreement with the MPMA as to the terms of his  
15 exit.

16 So, when he got that in place, then it was,  
17 oh, yeah, you know, nothing -- I've got no skin in the  
18 game, so I'll go ahead and help my buddy, Mr. Coleman,  
19 who, by the way, hasn't sued me, even though both Mr.  
20 Coleman and Mr. Botimer had the ability to bring those  
21 actions back in, during the time that they controlled  
22 the board from 2011 to 2014 but now in 2015, '16, '17,  
23 we're going to appoint the individual volunteers and  
24 say, you should have brought a lawsuit, or you should  
25 have tried to collect those.

1           And for the housing authority, they didn't  
2 have not been paying since 1998. And for the nursing  
3 home, they have not been paying from the time they  
4 joined. And for the commercial properties, you better  
5 believe those people were not going to pay. When they  
6 got -- when they said, nope, we're not going to pay,  
7 that was the end of that.

8           We had Mr. Coleman's deposition testimony  
9 that we submitted was replete with, well, you know, I  
10 got told leave it alone. I got told, you know, let it  
11 go. Well, did you ever -- did you ever make a motion?  
12 No, I didn't make a motion. Did you ever ask Mr.  
13 Botimer why he's not paying? Oh, he just said, leave  
14 it alone.

15           Total lack of ability to produce evidence of  
16 collectability, a requirement according to the Court of  
17 Appeals for any recovery of these absentees. And  
18 again, do they understand what type of burden they are  
19 trying to impose on the homeowners association?  
20 Because the association is just -- you know, it's an  
21 entity that incorporates and acts for all the  
22 homeowners and the association.

23           If they try -- this was their most stunning  
24 part of their response to this. What they said was,  
25 well, we're not trying to collect from the people who

1           hadn't paid. So we're going to let them off the hook  
2 but we want the association or the individuals or more  
3 likely insurance company, we want them to pay. So  
4 they'll all come out in the wash. Well, no, that's not  
5 what's going to happen.

6           What would happen was in fact that then those  
7 past dues that they participated in not collecting, all  
8 of those would become an outpatient of the entire  
9 homeowners membership. And the figures that were  
10 previously produced by Mr. Coleman as to how much money  
11 was lost, it's done. I mean, they basically put the  
12 homeowners association out of business. They would  
13 destroy this entire association just because they  
14 didn't act back in 2011 and 2014 but now they want --  
15 the board acted in bad faith in 2015, '16, and '17.

16           Your Honor, those arguments don't make sense.  
17 The Court of Appeals requires them to prove  
18 collectability. We are entitled to summary judgment on  
19 that.

20           The remaining issues are issues that I kind  
21 of lumped together as miscellaneous. And I apologize.  
22 I got confused on two different issues. The issue  
23 relating to paying for the expenses of maintaining  
24 South Creek, which was owned by the Botimer commercial  
25 properties versus the Phase 9. And so I want to

1 separate those out and clarify.

2 So those are two different events. You  
3 probably remember the -- you know, twenty-seven-  
4 thousand-dollar check that's bantered around. This  
5 went to Phase 9, and this was an proper expenditure of  
6 funds. Well, recall when we were talking about the  
7 governing documents. Okay. The governing documents  
8 provided two tiers. You can -- the association can  
9 distinguish between phases but once those phases -- or  
10 once you've allocate it to a phase, okay, within the  
11 phase, every lot has to be the same. Okay. So you  
12 can't discriminate within a phase as to the collection.  
13 That gave rise to the issue we've got in Phase 9.

14 Phase 9 initially was proposed to exit along  
15 with the other properties, and part of that was this  
16 issue of they had proposed a discrimination within the  
17 phase, developed versus non-developed property. So you  
18 paid -- I think it was \$10 on some and you then paid  
19 the regular amount on ones that were developed.

20 I believe that what happened was there was  
21 advice of counsel that, in fact, you couldn't do that.  
22 And look at -- you know, the governing documents say  
23 you can't, you know, discriminate within the phases.  
24 And so the question became, did you exit Phase 9, or  
25 did there become some type of negotiation as to how to

1 fix that problem.

2 And I understand what happened was that they  
3 negotiated a couple of areas that were within Phase 9  
4 who developed at the expense of the developer for Phase  
5 9 and Phase 9 in return came up to speed with the dues.  
6 And in fact, that produced a net profit for the  
7 association. That particular discretionary decision  
8 was then validated by the board and the entire  
9 membership at the December 10th, 2017 annual meeting.  
10 And you'll see the balance that -- as part of that  
11 exhibit that I produced for you, Your Honor. And  
12 that's been validated.

13 So again, it's a discretionary decision. It  
14 was to the benefit of the association and the entire  
15 membership. No one else is complaining except Hawk  
16 Hill, Mr. Coleman, and I'm not even sure if Ms. Wright  
17 is still in this lawsuit, but those are the individuals  
18 who are bringing those claims.

19 The other part of the expense that they say  
20 was improper, they're talking about these profit things  
21 in Phase 7. Again, they're trying to equate the gates  
22 with, you know, some grass maintenance, you know,  
23 mowing. And again, those particular areas, there's no  
24 gates preventing other people from using those pocket  
25 parks. So I'm not sure why they're saying it only

1 benefits that one.

2 But the other part is that the expenditure on  
3 property that is owned by the commercial developer, the  
4 Myra commercial. That part of south -- of Garrison  
5 Creek was, according to the college, the City of  
6 College Place, was required to be maintained as part of  
7 the PUD. They came in mostly by volunteer work.  
8 They've -- you know, they've made it, you know, walking  
9 trails, part of a really -- you know, a real asset.  
10 And they, you know -- they have one an obligation and  
11 two, it's something everybody likes. And, again,  
12 that's somewhat of a discretionary decision on how they  
13 spend that money, how they, you know -- yes, -- that's  
14 something we have an obligation to do it under the, you  
15 know, PUD and you know what, it benefits us all.  
16 People use those trails.

17 So these miscellaneous little decisions are  
18 the reason why the Supreme Court said, if it's within  
19 the governing documents within their authority. We  
20 don't give any of deference to the association's  
21 interpretation of the governing documents. That's this  
22 question of law but once it's within their authority,  
23 then we're going to take a hands-off approach, and the  
24 reason for that is you want finality of budgeting. You  
25 want the associations to be able to rely on those

1 decisions. You want there not to be this type of repeat  
2 litigation where individuals get drawn into court to  
3 defend their actions as volunteers.

4 These folks attempted to do the right thing.  
5 The rest of the holding association has agreed with  
6 them. And now we have some disgruntled people who  
7 want, you know, their pound of flesh. Your Honor, I  
8 believe it's time to put an end to this litigation and  
9 grant summary judgment, as the Court of Appeals said  
10 that you are entitled to do. Thank you.

11 THE COURT: Thank you, Ms. Fitzter. Ms.  
12 Benson?

13 MS. BENSON: Yes, Your Honor. I wasn't sure  
14 which order you would want us to take it in.

15 As to the individual defendants, I want to  
16 make it clear that the Court of Appeals told them they  
17 had to establish both malfeasance and damages, told  
18 them what they needed to do. We set forth what they  
19 needed to do in the briefing.

20 And what's ironic to me is Mr. DeGrasse  
21 attached his complaint to his opposition to the motion  
22 for summary judgment. A complaint, allegations in a  
23 pleading don't work. They don't defeat summary  
24 judgment.

25 This case, it will be six years and three

1 weeks that they've had this case. They didn't go back  
2 and get the evidence that the Court told them to. They  
3 didn't go back and meet the burden that they were told  
4 that they needed to meet. They just sit here stomping  
5 their feet and making the same arguments.

6 Notably, John Kress is -- lives in Phase 10.  
7 He's a defendant. You know, so Coleman purports to  
8 speak on behalf of everybody, but John Kress, my client  
9 who was individually sued, is also a member of the  
10 resident of Phase 10.

11 Seven of the individual defendants aren't  
12 even on the board, and five of them no longer even live  
13 in the villages. So I went back through the pleadings  
14 so that we could address each allegation of malfeasance  
15 like the Court of Appeals wanted us to do. And they  
16 had to establish the four elements, the existence of  
17 the duty and breach of that duty under the former RCW  
18 24.03127, resulting damages, and proximate cause.

19 And so they also have to show that my clients  
20 acted outside of their broad authority, which they have  
21 failed to do. So they talk about failing to enforce  
22 covenants and requiring payments of dues or expenses of  
23 common areas. Again, there's no evidence that it was  
24 bad faith.

25 In fact, the Court of Appeals held that the

1 exit amendments were valid. There was no finding of  
2 bad faith with regards to the exit amendments. They  
3 have no duty in their individual capacity to require  
4 payment of dues in their capacity and have no more  
5 ability to require payment as plaintiff Coleman had the  
6 ability to do so from 2011 to 2014 when he was board  
7 member.

8 He is seeking to hold my clients liable for  
9 actions he didn't take for the three years he was  
10 president. They take issue with them amending the  
11 CC&Rs. They're still stomping their feet about that,  
12 even though that was held valid by the Court of  
13 Appeals.

14 This was approved by the overwhelming  
15 majority of the membership. No evidence of bad faith.  
16 Individual defendants cannot require payment of  
17 expenses associated with the traffic control gates,  
18 have no legal duty to do so, and we've already  
19 addressed that as well.

20 Their declarations in eight years fail to  
21 even mention Marie Evans, John Cress, Dave Gulo, and  
22 Jim Murphy. Not mentioned anywhere. It's automatic  
23 that they should be dismissed. And there's no evidence  
24 of any conclusory allegations as to them -- summary  
25 judgment as proper as to the four of them.

1 As to my remaining clients, summary judgment  
2 is still proper as to them. As to Dick Cook, Ron  
3 Hymes, and Scott Towsley, the Coleman and Botimer  
4 declarations contain conclusory allegations without  
5 factual support and are insufficient to defeat the  
6 motion for summary judgment.

7 The Court of Appeals has told them not. I  
8 mean, Bonner's declaration is a cut and paste in large  
9 part from plaintiff's complaint. There's no evidence  
10 that says, for instance, what specific covenant they  
11 didn't enforce, what it was, what the damage is  
12 approximately flowing, again, showing that they would  
13 have the ability to collect and enforce as the Court of  
14 Appeals had them do.

15 The only specific allegation in either  
16 Coleman or Botimer declaration against any of the nine  
17 individual defendants relates to only two, Cassie  
18 Seegal and Ray Goth. And I'm going to explain, and  
19 that's in relation to Phase 9, as to why that is  
20 insufficient to create an issue of summary judgment.  
21 And I'm going to share my screen because I have it --  
22 can your honor see my screen with the annual minutes  
23 from December 10th, 2017?

24 THE COURT: Yes.

25 MS. BENSON: All right. So the Coleman

1 declaration misrepresents to this court, "There is, 'no  
2 record that these financial transactions were ever  
3 discussed or approved by the MPMA board or the  
4 directors of the membership."

5 Well, actually, this is the Exhibit B that  
6 Ms. Fitzer already referred to.

7 "In December 10th, 2017 ratification of  
8 Palish Phase 9 assessment renegotiations, they opened  
9 the discussion on the ratification. Ray Goth explained  
10 that the board of Palish agreed that since Palish had  
11 now paid full assessments for undeveloped blocks, VGC  
12 would refund Palish 28,000 in common area expenses paid  
13 by Palish in the September 2015 to '16 time period and  
14 would pay Phase 9 common expenses in 2017 forward.

15 "Ray further explained that the higher  
16 undeveloped block assessments minus the assumed common  
17 area expenses resulted in a net favorable variance of  
18 approximately \$35,000, which Jim Hall booked in the VGC  
19 2016 and 2017 operating and reserve funds."

20 So it was discussed under ballot discussion  
21 and vote. And then we go down here and we look at the  
22 voting results for that membership. Ratify Palish  
23 negotiations, 176 voted yes, 23 no, 87.6% in the ballot  
24 was proved -- or was approved.

25 I'm going to stop sharing now, but it's

1 simply false. Like most of the allegations that are  
2 conclusory, they're not supported by the facts, and  
3 when you actually look at the documents and you look at  
4 the facts, they establish otherwise. There's no  
5 evidence that my clients acted outside of their  
6 authority, that they breached a duty, that that duty  
7 proximately caused damages. And you can't just skip  
8 past all of these and skip past establishing what they  
9 have to do. And summary judgment is properly granted  
10 after six years.

11 There's no evidence supporting the conclusory  
12 allegations of malfeasance, and my nine clients should  
13 be dismissed with prejudice.

14 Your Honor, do you have any specific  
15 questions as to the individual defendants and why  
16 they're not liable that I can answer for you?

17 THE COURT: Not at this time, Ms. Benson.  
18 Thank you very much. Mr. DeGrasse, I will turn it over  
19 to you.

20 MR. DEGRASSE: While it's true that Court of  
21 Appeals upheld the exit amendment, it's nevertheless  
22 also true that those exit amendments constituted  
23 admission of liability there.

24 In other words, had these so-called non-  
25 paying phases had no obligation -- had there been no

1 obligation to assess and collect expenses, why would  
2 the exit amendments even be considered.

3 The very fact that the exit amendments were  
4 proposed and passed shows the error and the bad faith  
5 of the MPMA and the directors.

6 Secondly -- and there are view points needed  
7 to deny these motions, Your Honor. With respect to the  
8 so-called burden to prove collectability, that's dicta  
9 in the Court of Appeals. It is not the plaintiff's  
10 burden here to function as an assignee of claims the  
11 board of directors failed to pursue. And the court's  
12 need to

13 The board of directors failed to pursue those  
14 claims. That was in bad faith. That gives rise to  
15 liability in damages to the plaintiffs. In other  
16 words, you can't simply say well, you can't prevail,  
17 Mr. Plaintiff, because of our failure. Our failure is  
18 what gives rise to the claim, and as shown in the  
19 declaration of Donald Coleman, submitted it, there's a  
20 crucial motions for summary judgment, there's a crucial  
21 component of the governing documents that hasn't been  
22 addressed that is dispositive which is to say it's  
23 Article 7(g) of the bylaws, a copy of which is attached  
24 to the Coleman declaration submitted in opposition to  
25 the motion for summary judgment. That is a non-waiver

1 provision, Your Honor. And in essence, and I can read  
2 it, it's very simple. I will quote:

3 "Failure to assess. Any failure by the board  
4 or the association to make the budget and assessments  
5 herein before the expiration of any budget period for  
6 the ensuing period shall not be deemed a waiver or  
7 modification in any respect of the declaration or a  
8 release of the owners from the obligation to pay  
9 assessments during that or any subsequent time period.  
10 And the monthly assessments and amounts previously  
11 established shall continue until the new assessment is  
12 established. "

13 That, in itself, should result in a denial of  
14 these motions. There's simply nothing in the governing  
15 documents that allows these defendants to not do their  
16 job and then say, by the way, it's too late now. It's  
17 never too late. That's what the governing documents  
18 say.

19 And, as I earlier stated, we are not standing  
20 in the shoes of these defendants. We are not taking an  
21 assignments of these defendants' claims against the  
22 non-paying parties. We're suing these defendants for  
23 damages arising from their failure.

24 And, as to the Phase 9 problem, there's no  
25 question that the December 10, 2017 minutes say what

1 Ms. Benson quotes. At the same time, the mechanics and  
2 the actual monies involved are denied as per the  
3 declaration of Mr. Coleman. And I would like to hand  
4 to the Court a copy of what has been called the Kleshky  
5 memo, which is a memo that we had to fight hard to get  
6 that was addressed from Attorney Timothy Kleshky, a  
7 lawyer in the Tri-Cities, to Cassie Siegal, then  
8 president, and it's dated October 19, 2015, and it  
9 discusses the potential Phase 9 assessment payment  
10 exemption issue.

11 This is in the record. It's Exhibit 9 of the  
12 Richard Cook deposition. I'm not going to belabor it,  
13 but it should be viewed and appreciated by the Court,  
14 because essentially, Mr. Kleshky says they can't do  
15 what they want to do with respect to Phase 9 but if  
16 they can show an actual positive benefit, then with a  
17 lot of advanced discussion and authorization from the  
18 members, it's possible they could get away with it.  
19 That's essentially what the memo says.

20 So the whole notion that the board ratified  
21 or the membership ratified this action by Mr. Goth does  
22 not support a summary judgment determination here. The  
23 motion should be denied.

24 THE COURT: Okay. You agree, or I believe  
25 you agreed before, Mr. DeGrasse, that there's no

1 individual claim for liability. All claims are on the  
2 board or the individuals acting in their capacity as a  
3 board member.

4 MR. DE GRASSE: That's correct, Your Honor.

5 THE COURT: Okay. And the Court of Appeals  
6 told us what standard to apply. 24.03.127 was in  
7 effect as of 1986. That's from their opinion. The --  
8 I'm going to quote a sentence from the Court of Appeals  
9 opinion. This is on Page 31. "It may be that MPMA  
10 acted for the benefit of the homeowners by not suing to  
11 force one or more phases to pay assessments and/or  
12 common expenses."

13 Mr. Coleman has stated in declarations that  
14 he was -- I believe the quote was, leave it alone. When  
15 he made inquiry as the president back in 2011 to 2014  
16 about why dues were not being assessed, it was leave it  
17 alone.

18 If it was not a violation of the requirement  
19 to act in good faith for Mr. Coleman to take that  
20 advice, the leave it alone advice, and not pursue that,  
21 if Mr. Coleman was acting in good faith at that time,  
22 why would a future or other board member who makes the  
23 same decision not also be acting in good faith at the  
24 time he or she makes the same decision?

25 MR. DE GRASSE: I think we'd have to be at

1 the context and the surrounding circumstances, and it's  
2 our view that these board members were told early on,  
3 as early as 2015 and '16 by Mr. Coleman and others that  
4 they need to make these assessments and they shouldn't  
5 be giving special deals to Phase 9.

6 That was not something that was told to Mr.  
7 Coleman when he was on the board. So the circumstances  
8 are different. It's not -- it's hypothetically  
9 possible they both could be okay. It's also  
10 hypothetically possible they both could be in bad  
11 faith.

12 But the simple fact that Mr. Coleman did what  
13 he did without knowledge of the surrounding  
14 circumstances is not on this record makes them not  
15 analogous. Different people, different time, different  
16 place, different circumstances.

17 THE COURT: Okay.

18 MS. BENSON: Your Honor, can you correct the  
19 record, please, because a misrepresentation was just  
20 made to the Court?

21 THE COURT: Yes, Ms. Benson. And just for  
22 the record, I was planning to give Ms. Fitzer and  
23 yourself an opportunity to reply but if you'd like to  
24 go first, you can go ahead.

25 MS. BENSON: Sure. There is a letter from

1 2012. Mr. Coleman testified to it. He was told in  
2 2012 that they technically collect from the other  
3 phases but yet he chose not to in 2014 and 2015, he  
4 talked about in deposition the cost of litigation, and  
5 Mr. DeGrasse keeps sitting up here saying bad faith,  
6 bad faith, with no evidence. And when you actually  
7 look at from the Court of Appeals, we have guidance  
8 from them on this issue.

9 There, the Court found that the members  
10 decided that the MPMA proposal was for their benefit,  
11 defeating Coleman's allegation that the MPMA and its  
12 board members failed to act for the benefit of the  
13 homeowners because homeowners decided via its vote on  
14 the amendment that the proposal was for their benefit.

15 The Court of Appeals held that the amendments  
16 to the CC&Rs was for their benefit. That same rationale  
17 can be applied to each other allegation of malfeasance,  
18 including the allegation regarding the -- they're  
19 trying to make an allegation with regard to Phase 9.

20 That's the only thing that's not a bald  
21 allocation conclusory not supported and not sufficient  
22 to go through summary judgment.

23 If you take the Court of Appeals rationale  
24 and the direction that they have given, they gave to  
25 this Court, they gave the plaintiff, plaintiffs just

1 chose to ignore it, the Palish Phase 9 negotiations  
2 were approved 87.6%.

3 So, again, that allegation that it was in bad  
4 faith or not for the homeowners' benefit is defeated by  
5 the fact that the overwhelming majority of the  
6 membership voted for it. Reasonable minds cannot  
7 differ on that fact.

8 There is also the -- if we're not being sued  
9 in their individual capacity, we've already addressed  
10 that there's no bad faith. Any individual liability as  
11 a board member, they are immune under the governing  
12 documents. They don't dispute that. They're immune  
13 under business judgment rules. He says, well,  
14 Bamberger held -- Bamgardner held that it doesn't apply  
15 to MPMA.

16 Well, it applies to the individual  
17 defendants. There's no dispute as to that. And with  
18 the Court of Appeals guidance, with the immunity  
19 provided under the governing documents, again, six  
20 years to come forth with something. They have nothing  
21 because my clients acted in good faith. And now that  
22 all allegations of malfeasance have been addressed and  
23 considered by the Court, summary judgment is properly  
24 granted in favor of the individual defendants. And we  
25 would respectfully request that the court enter it at

1 this juncture.

2 THE COURT: Thank you, Ms. Benson. Ms.  
3 Fitzer, would you like an opportunity to respond?

4 MS. FITZER: Just briefly, though. Ms.  
5 Benson, maybe to my argument, but she get it in a much  
6 more eloquent way than I can do so I'll accept that.

7 Your Honor, this is really about the need to  
8 put an end to this type of litigation. And Mr.  
9 DeGrasse said, well, you know, if they didn't -- you  
10 know, if this wasn't about the money, then why did they  
11 go forward with the exits? You know, they were just  
12 trying to avoid this mess and the losses.

13 That's not true. If you look at the Court of  
14 Appeals. What was accomplished through the exits was a  
15 taking back of this homeowner's association from the  
16 developers who controlled it by virtue of their ability  
17 to have -- you know, to defeat quorums and defeat  
18 action.

19 They took it from a developer HOA to a  
20 homeowners association. And that has a credible value,  
21 because now the decisions can be made by the homeowners  
22 without the interference of the developer. And, if Mr.  
23 Coleman and the residents of Hawk Hill don't like what  
24 the board is doing, their remedy is simply to vote them  
25 out, but not to try to impose damages on all the other

1 homeowners because, again, whatever money they think  
2 they're going to get is going to come from the other  
3 homeowners.

4 This is time to put an end to this. These  
5 people acted in good faith. They acted in the same way  
6 that Mr. Coleman acted, with the exception of the fact  
7 that Mr. Coleman had something that they didn't have.  
8 He had that letter from the attorney in 2012 telling  
9 him that the assessments -- that they had to collect  
10 assessments from everyone but he sat on that and he  
11 made the situation worse.

12 What really would happen if they tried to  
13 collect from those individuals. Even if Mr. Botimer  
14 was willing to pay. What about Walla Walla Housing  
15 Authority and the nursing home? If they tried to  
16 collect from putting a lien on that property, what type  
17 of legal mess would that have created? What type of  
18 liability for the association would that have created?  
19 And I don't own real property, but I kind of remember  
20 from law school days of something called slander of  
21 title and if you go for decades without taking any  
22 action, then all of a sudden you go, oh, look, you owe  
23 me all this money, that's going to produce a real  
24 drawn-out, expensive legal fight that you -- they would  
25 most likely lose. And they have been in the benefit of

1 the homeowners association, the homeowners agree --  
2 again, it's time to put an end to all of this and grant  
3 summary judgment. Thank you, Your Honor.

4 THE COURT: Thank you, Ms. Fitzner.

5 Okay. The Court wants to begin by thanking  
6 counsel for their excellent presentation today, as well  
7 as the briefing, which has been superb. We -- I guess  
8 all of us, myself, certainly maybe more than anyone  
9 else, derives direction from the Court of Appeals when  
10 issues are remanded. And this case is no different.

11 I'm going to quote again from the Court of  
12 Appeals' decision. This is on Page 31. "It is  
13 apparent from the trial court's oral ruling, it decided  
14 only the question of whether the exit amendments are  
15 valid. Nothing in its ruling considered the question  
16 of whether MPMA and the board members are liable for  
17 Coleman's various allegations of malfeasance."

18 The Court declined to consider that and  
19 remanded to this Court for consideration of that  
20 question. The Court of Appeals went on to give this  
21 Court some additional guidance in terms of the  
22 liability standard and has -- as has been alluded to,  
23 that is RCW 24.03.127 from 1986, the version in place  
24 at the time.

25 Quoting from that statute board members must

1 serve, "in good faith in a manner such director  
2 believes to be in the best interest of the corporation  
3 and with such care, including reasonable inquiry as an  
4 ordinarily prudent person in like position would use  
5 under similar circumstances."

6 So that is the standard that the Court is  
7 applying. And the overarching theme -- I guess I'll  
8 call it a theme or maybe a thread through this and  
9 through both motions goes back to application of that  
10 RCW and a determination of what was happening with the  
11 board members at the time. In other words, were they  
12 fulfilling their obligation under former RCW 24.03.127  
13 to act in good faith.

14 The Court believes that the governing  
15 documents do allow the board to allocate expenses  
16 between the phases. That is in Article 12 of the  
17 Articles of Incorporation, Subsection C. We also have  
18 -- I mean, the history is the history in terms of the  
19 payment and what was collected or what was not  
20 collected but at the end of the day, what the Court  
21 sees is that we have a situation where individuals  
22 disagree with decisions that were made by the then  
23 members of the board of the MPMA, and the question is  
24 whether or not that becomes an action for liability or  
25 whether it is under the board's discretion under the

1 operating documents and the governing law.

2 I think the -- and Mr. DeGrasse called it  
3 dicta. I appreciate that comment. I think certainly  
4 if we were in another case and we were reading this  
5 opinion, you could certainly take that conclusion -- or  
6 come to that conclusion. I see it a little differently  
7 because this is this case, so what might be dicta in  
8 another case trying to apply, I think is very much on  
9 point in our case.

10 And so some of the language in the Court's  
11 decision is helpful to the Court -- helpful to the  
12 trial court. One of those quotes is the sentence I  
13 read earlier, "It may be that MPMA acted for the  
14 benefit of the homeowners by not" -- and not is  
15 emphasized -- "suing to force one or more phases to pay  
16 assessments and or common expenses."

17 I don't know if it's an old saying or just  
18 something that I've heard many times through my career,  
19 but the idea that just because you can sue someone does  
20 not necessarily mean that you should sue someone or  
21 that it is a good idea. And that's where we are here.

22 We have a situation where documents arguably  
23 allowed assessments to be put into place, and they were  
24 not, and they were not. And why were they not? And  
25 was that decision a bad faith decision? Was that a

1 decision that was filled with malfeasance? Was there  
2 some ill intent or were these volunteer board members  
3 who were doing the best they could under the situation  
4 at the time and looking out for what they believed to  
5 be in the best interest of the corporation, which would  
6 in this case be the homeowners association?

7 And it's hard -- and I understand the  
8 argument, Mr. DeGrasse, that while we're talking about  
9 different board members and they may have had different  
10 information at the time or may have been under  
11 different pressures or different influences, and that  
12 may be true, but what's also true is we have  
13 individuals who are serving in the same role, on the  
14 same board, trying to accomplish the same thing, which  
15 is let's do a good job as a volunteer board member for  
16 the best interest of the homeowners association. And,  
17 between 2011 and 2014, Mr. Coleman made the decision  
18 that it was not, or whether it was his decision or he  
19 was relying on decisions that had been made by others.  
20 Either way, we get to a point where those assessments  
21 were not made.

22 And so to now come to court and say, well, I  
23 had good reasons to not make those assessments at the  
24 time from 2011 to 2014, but beginning in 2015, boy,  
25 everyone should have done it, and now they've acted for

1 some -- with some improper purpose, the Court can't  
2 come to that conclusion. Just like the Court can't  
3 conclude that Mr. Coleman from 2011 to 2014 was somehow  
4 operating in bad faith or acting with malfeasance. The  
5 Court doesn't make that conclusion, and the Court  
6 doesn't make the conclusion that anyone else did later.

7 With regard to the traffic control gates, I  
8 understand the argument that closing off Cress Lane has  
9 a benefit to more than just the folks on Cress Lane,  
10 and I suppose there may be some benefit, but the Court  
11 is not persuaded that the residents of Phase 10 do not  
12 receive an extra benefit or more benefit or additional  
13 benefit from having those gates located where they are  
14 than the other residents do.

15 So it could be that other residents may also  
16 benefit from a reduction in traffic, but as was pointed  
17 out by counsel, certainly other benefits, like having  
18 your neighborhood be more secure, are not -- that is  
19 not afforded to the other homeowners in the Villages of  
20 Garrison Creek who are not in Phase 10.

21 Clearly -- well, maybe clearly is not the  
22 right word. It would not appear there's a private  
23 ownership of the gates. The evidence before the Court,  
24 which is substantiated by that invoice that was sent on  
25 behalf of Hawk Hill to MPMA, shows that the traffic

1 control gates, the privacy gates, security gates,  
2 whatever we want to call them, the gates, the big gates  
3 that block traffic, have been historically maintained  
4 by Phase 10 and any dedication, and I think you may be  
5 right, Mr. DeGrasse, that a formal dedication would not  
6 be necessary because we're not talking about real  
7 property, which in that case, I think, probably  
8 benefits the defendant's position, which is if we don't  
9 need to have a formal document such as a dedication  
10 because we're talking about personal property, I think  
11 it's easier to look at, okay, what's been the course of  
12 dealing and what have people done, and historically,  
13 that's what's happened, is that Hawk Hill and Phase 10  
14 have maintained those gates.

15 The Court believes the evidence demonstrates  
16 that they're the ones who have paid for it, they being  
17 the Phase 10 residents, and they are the ones who  
18 derive the primary benefit.

19 Ms. Fitzer, you mentioned at one point early  
20 in the argument about an agreement having been reached  
21 on the motions to strike, and then we didn't come back  
22 to that point. Is there something more you'd like to  
23 put on the record in that regard, or do we need to  
24 address those? There was the motion to strike Mr.  
25 Hayner's (ph) letter to Mr. Hawkins, and then there was

1 also the motion to strike from Mr. DeGrasse's  
2 declaration, the Strobel (ph) letter. Can you provide  
3 any more detail on that?

4 MR. FITZER: Yes, Your Honor. I think I set  
5 up a briefing on the reasons why the Hayner letter is  
6 not hearsay and why they have foundation and why it's  
7 admissible and can be considered. My comment is that I  
8 was going to rely on that attachment which was the  
9 dedication for 2004, but I do believe it's appropriate  
10 to consider the Hayner letter and Exhibit A to my  
11 declaration.

12 I'm not -- Mr. DeGrasse has cured somewhat  
13 the defect in the -- in his declaration by submitting a  
14 declaration from the individual whose email he  
15 attaches, so I don't know whether it's here or there,  
16 whether the Court needs to make a formal ruling.

17 THE COURT: Okay. Thank you, Ms. Fitzter.  
18 The Court will officially deny both motions to strike  
19 The Court agrees with Ms. Fitzter's analysis that Mr.  
20 Hayner's letter can be entered not as hearsay but  
21 rather as evidence of that -- of their position, not  
22 for the truth of what's asserted, that there was an  
23 agreement, but rather that their position was that this  
24 agreement existed and that is relevant to who was  
25 paying or being asked to pay it or whatnot.

1 So, at the end of the day, I'm just looking  
2 at my notes to make sure I didn't miss anything. The  
3 Court is going to deny the plaintiff's motion for  
4 partial summary judgment on the gates and grant the  
5 defendant's motion for summary judgment on the  
6 remaining issues, and the primary basis, again, is the  
7 fact that there is just -- there is not evidence of a  
8 breach of the RCW that was in place at time nor any  
9 evidence of bad faith. Disagreeing with a decision  
10 does not mean that the underlying decision was improper  
11 or had improper motives.

12 Certainly, folks are -- have every right to  
13 disagree but that doesn't mean it's actionable, and  
14 that's what we have here. We do not have evidence that  
15 there has been a violation of the good faith duty  
16 imposed by 24.03.127.

17 Questions, comments, concerns, topics that  
18 the Court failed to address that I should have  
19 addressed. Mr. DeGrasse, anything from your  
20 perspective?

21 MR. DE GRASSE: Nothing from the plaintiffs,  
22 Your Honor.

23 THE COURT: Okay. Ms. Ms. Fitzter, anything?

24 MS. FITZER: No, Your Honor. I apologize. I  
25 was on my way to Walla Walla when I had an unfortunate

1 apparel problem, and had to turn around because I could  
2 not appear with coffee on my blouse in front of the  
3 Court.

4 I do not have that's a long way of saying  
5 that I had a proposed order, but I'm not there in  
6 person to give it to.

7 THE COURT: Well, what I will ask, Ms.  
8 Fitzer, is if you would share that with Mr. DeGrasse,  
9 if you could circulate an order to Mr. DeGrasse and Ms.  
10 Benson, and then my hope would be that if counsel can  
11 agree on the language that could just be submitted ex  
12 parte, that can be done through Ms. Gramstad (ph), the  
13 Court will sign it and then circulate and get copies to  
14 everyone.

15 MS. FITZER: Certainly, Your Honor.

16 THE COURT: Okay. Ms. Benson, anything from  
17 your perspective?

18 MS. FITZER: No, thank you, Your Honor. I  
19 appreciate your time.

20 THE COURT: Okay. I want to again thank  
21 counsel, thank for their presentation, their briefing,  
22 thank the parties for being here, and I will otherwise  
23 look for that order and we will be in recess.

24 (Concluded at 1:50:16 p.m.)  
25

1 CERTIFICATION

2  
3 I, Kathleen Price, the assigned transcriber,  
4 do hereby certify that the foregoing transcript  
5 proceedings in the Walla Walla County Superior Court,  
6 digitally recorded on April 25, 2024, Index No. 1:38  
7 p.m. to 1:50 p.m., is prepared in full compliance with  
8 the current Transcript Format for Judicial Proceedings  
9 and is a true and accurate compressed transcript of the  
10 proceedings as recorded.

11  
12 *Kathleen Price*

13  
14  
15 KATHLEEN PRICE, CET'D-325  
16 PRICE TRANSCRIPT SERVICE  
17

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19 Date: June 10, 2024  
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