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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

WESTWOOD COURT TOWNHOMES)
CONDOMINIUM OWNERS ASSOC. a)
Washington non-profit corporation,)
)
Plaintiff,)
)
v.)
)
WESTWOOD COURT, LLC, a)
Washington limited liability company; P.)
EDWARD DEAN and JANE DOE)
DEAN, individuals; NORTHWEST)
HOUSING GUILD LLC, a Washington)
Limited liability company; **BRAD)**
RUNNING and JANE DOE RUNNING,)
, individuals; **CLIFFORD RUNNING and)**
JANE DOE RUNNING, individuals, et al.)
)
Defendants.)
_____)

NO.06-2-13861-9 KNT
ORDER DENYING MOTION
SUMMARY JUDGMENT OF
DEANS AND RUNNINGS &
RULINGS ON CERTAIN LEGAL
ISSUES

THIS MATTER having come on for hearing on Certain Defendants' Motion for Summary Judgment and the Court having reviewed the pleadings and files herein, including but not limited to:

1. Certain Defendants' Motion for Summary Judgment;
2. Declaration of Stephen M. Todd in Support of Certain Defendants' Motion for Summary Judgment and Exhibits thereto;
3. Declaration of P. Edward Dean Jr. in Support of Certain Defendants' Motion for Summary Judgment and Exhibits thereto

- 1 4. Defendants Runnings' Joinder in Defendant Deans' Motion for Summary
- 2 Judgment
- 3 5. Plaintiff's Opposition to Certain Defendants' Motion for Summary
- 4 Judgment
- 5 6. Declaration of Gregory L. Harper and Exhibits thereto
- 6 7. Plaintiff's Opposition to Defendant Runnings' Motion for Summary
- 7 Judgment
- 8 8. Defendants' Deans' Reply in Support of Motion for Summary Judgment
- 9 9. Defendants Brad Running and Cliff Running's Reply in Support of Motion
- 10 for Summary Judgment
- 11

12 And the court having heard the argument of counsel and being fully advised
13 in the premises, now therefore,

14 **ORDERS, ADJUDGES AND DECREES** that:

- 15
- 16 1. The provision of RCW 64.34.020 as amended to delete the words "acting
- 17 in concert" is not retroactive. Thus the words "acting in concert" are
- 18 included in the definition of "declarant."¹
- 19 2. The actions of Mr. Dean were not actions "in concert" as this court
- 20 interprets the analysis of the case of One Pacific Towers Homeowner's
- 21 Assoc, et al. v. Hal Real Estate Investments, Inc., et al., 148 Wn.2d 319
- 22 (2002) (OPT) because the OPT decision did not apparently apply to the
- 23 sole director and officer of HAL (Paul Manheim) but rather to HAL as a
- 24 separate legal entity acting in concert with its subsidiary units in an
- 25 apparent effort to evade the Washington State Condominium Act
- 26 provisions while nevertheless exercising the special rights of a declarant.
- 27 The argument of Plaintiff's in the case sub judice would apply that same
- 28 reasoning to the relationship between Mr. Dean and the Westwood LLC,
- 29 which this court does not find to be implied in the reasoning of the OPT
- 30 opinion.
- 31 3. This court finds that Mr. Dean and the Runnings as members of the
- 32 Association Board of Directors under the control of the Declarant had a
- 33 fiduciary duty that was independent of the Declarant's and the question of
- 34 their duty and knowledge of the events surrounding the letter of Mr.
- 35 Purcell are factual, subject to determinations of credibility, and must be
- 36 resolved at a trial.
- 37 4. The plaintiffs' cause of action for a violation of the CPA shall remain in
- 38 place essentially for the same kind of reasoning about who knew what and
- 39 when, but recognizing that the elements of a CPA action are potentially

¹ The amendment is not "curative" of an ambiguous provision in a statute; is not "remedial" in the sense that the case law appears to construe that term in relation to the creation, not the destruction, of remedies; and the amendment acts to deny a substantive right against all those who act in concert as opposed to limiting liability to the entity formally declaring itself to be a "declarant" alone.

Westwood Condo Assoc. v. Westwood LLC et al

KC No. 06-2-13861-9 KNT

ORDER ON DEFENDANTS' MOTION FOR
SUMMARY JUDGEMENT

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present with regard to the issues of fact and the knowledge thereof created by the Purcell letter and the disputed actions that followed as evidence of nondisclosure which are capable of repetition and which are deceptive (if proved) and obviously are if intentionally repeated such as to affect trade and commerce.

5. The remaining causes of action brought by Plaintiffs' are dismissed.

DATED this 5 day of November, 2007.


George T. Mattson, Judge

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