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Court of Appeals
Division III
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No. 390390

COURT OF APPEALS,
DIVISION III
OF THE STATE OF WASHINGTON

JAMES POWERS,

Appellant,

vs.

REFLECTION LAKE COMMUNITY

ASSOCIATION, a Washington nonprofit corporation,

and **RICK SMITH**, Respondents,

and

BANNER BANK, a Washington Bank Corporation,

Plaintiff

BRIEF OF APPELLANT

William C. Schroeder, WSBA 41986
KSB LITIGATION, P.S.
510 W. Riverside, Ste. 300
Spokane, WA, 99201
(509) 624-8988
Attorneys for Appellant

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INTRODUCTION AND SUMMARY

A series of disputes among members of Reflection Lake homeowners' association resulted in two suits: a Primary suit regarding interpretation and enforcement of association bylaws (Cause No. 20-2-03213-32); and an interpleader initiated by the homeowner's association's bank regarding the association's checking account (Cause No. 20-2-03199-32). In the interpleader action, the court granted Respondents summary judgment on January 29, 2021, and the decision was appealed on February 19, 2021.

On November 9, 2021, after mediation, both suits were settled, as reflected in the signed CR 2A mediated settlement agreement. As part of the Settlement Agreement, Cause No. 20-2-03213-32, No. 20-2-03199-32, and No. 38048-3-III were to be stayed and dismissed at a later time with prejudice and without an award of costs or fees.

Shortly after the CR2A Mediated Settlement Agreement was signed by the parties with an effective

date of November 9, 2021, Respondents asserted that the Mediated Settlement Agreement was not binding and refused to abide by its terms. The Court of Appeals on January 25, 2022, issued its decision and awarded attorney fees to Respondents pursuant to RAP 18.9(a).

On May 31, 2022, the Honorable Harold Clarke III in Cause No. 20-2-03213-32 entered an order granting Appellant's motion to enforce the Mediated Settlement Agreement and ruled that the parties were bound by its terms.

After the Mandate was issued by the Court of Appeals, a hearing for an entry of a judgment for attorney fees and costs was set for June 17, 2022, in Cause No. 20-2-03199-32.


On June 8, 2022, Appellant filed a motion to stay entry of judgment pursuant to the terms of the November 9, 2021, Mediated Settlement Agreement. Instead of enforcing the Mediated Settlement Agreement, the trial court refused to consider it, and instead entered judgement against Appellant.

ASSIGNMENTS OF ERROR

1. The trial court erred in refusing to enforce the terms of the mediated CR 2A Settlement Agreement.
2. The trial court erred in entering judgment against Appellant.


STATEMENT OF THE CASE


Reflection Lake is an artificial lake and residential community in Spokane County. The Community governs itself through an HOA, the Reflection Lake Community Association (“RLCA”). (CP 5)

In 2020, a series of disputes arose among certain present and former members of RLCA’s board of directors, regarding allocation of costs for road grading and maintenance, and also governance of the board and transparency issues. (CP 5) 

Two (2) suits were commenced in Spokane County Superior Court, Cause No. 20-2-0313-32 and No. 20-2-03199-32. (CP 5)

The Primary suit concerned the substantive claims and allegations between the parties. (See CP 5-6)

 The second was an interpleader initiated by Banner Bank regarding RCLA's checking account, which was decided in favor of Respondents on a motion for summary judgment. That decision was appealed.

On November 9, 2021, the parties entered into a Mediated Settlement Agreement with an effective date of November 9, 2021. (CP 5-6) The agreement expressly  settles both of the then-pending suits: the appeal of No. 20-2-03199-32; and No. 20-2-0313-32, then pending in Spokane Superior Court. (*Id.*) As part of the Mediated Settlement Agreement, the two suits, including the appeal, were to be stayed and dismissed at a later time with prejudice and without costs. (*Id.*)

The Mediated Settlement Agreement states:

MEDIATED SETTLEMENT AGREEMENT
Re: Spokane County Superior Court Cause
Nos. 20-2-03213-32 and 20-03199-32

Effective Date: November 9, 2021

This Mediated Settlement Agreement ("Agreement") Is entered into by Robert Lee, James Powers, Susan Emery, Neal Kimball

and Russ Bishop, ("Plaintiffs"), and Reflection Lake Community Association ("RLCA"), Rick Smith, Joe Dickinson, James Boothby, and Charlie Bennett, ("Defendants").

A. East Side Road Maintenance.

1. Pursuant to the existing RLCA covenants (§4.2.3), assessments for maintenance of the private roads on the east side of the lake shall be allocated evenly among those lots fronting on the private roads (including those lots owned by RLCA).
2. Road maintenance will be overseen by a RLCA Road Committee, which shall be chaired and consist of RLCA members residing on the east side of the lake. Assessments raised for road maintenance will be held in a separate account, and expenditures shall require the approval of the Road Committee and the RLCA Board.
3. The RLCA bylaws shall be amended as necessary to clarify RLCA's obligation to provide for necessary maintenance of the roads.

B. Governance

1. RLCA shall be transparent to RLCA members concerning all financial matters, RLCA will post on the Reflection Lake website the Treasurer's Report and all receipts for

expenses over \$100 on a monthly basis. If a member requests hard copies of any receipts or other documents, said documents will be made available at the RCLA office within 14 days for inspection and reproduction at the Member's expense. In maintaining Its books and records, RCLA shall follow generally acceptable accounting principles.

2. All RLCA Board meetings will be recorded by audio and shall be made available to the membership monthly and the recordings shall be kept in archive for two (2) years. If a copy is requested, it will be made available at the RCLA office at the Member's expense. Members may arrange for video recording of RLCA Board meetings at their own Initiative and expense.

3. Notwithstanding any contrary term of this Agreement, RLCA's Board and RCLA members will strictly follow the bylaws as currently comprised and as amended.

4. there will be complete transparency by RCLA In all RLCA elections and votes. Proxy ballots are not required for any vote unless an individual member requests a proxy ballot. Proxies may be allowed as provided by the Bylaws. Any RCLA member shall be allowed to review election ballots that have been

cast upon request unless prohibited by law or the Bylaws,

5. RLCA shall obtain and maintain D&O insurance to cover, among other things, breach of fiduciary duties by RCLA Board members.

C. General Provisions

1. The parties agree to make a good faith effort to resolve by mediation any subsequent dispute over the meaning of, or a party's compliance with, this Agreement, including the preparation and Interpretation of final settlement documents as provided below. The parties will share the costs of mediation. If litigation proves necessary following mediation, the generally prevailing party shall be entitled to its reasonable attorney's fees and costs associated with enforcing the Settlement Agreement. Each party hereto agrees to refrain from making critical or disparaging public statements about the other parties or about the terms of this Settlement Agreement.

2. The RLCA Board has represented that individual members covered the RLCA's legal fees to McNelce Wheeler, PLLC through July 9, 2021. Those fees will not be reimbursed by RLCA. The RLCA made Its first payment to McNelce Wheeler on July 24, 2021, and

will cover Its further attorney's fees until the dismissal of the lawsuit with prejudice.

3. The parties agree to stay the current lawsuits between the parties until such time as RLCA and the Reflection Water Association successfully transfer ownership or operation of the Reflection Lake eastside water system to a third party, at which time the parties hereto agree to execute appropriate full and final release, settlement documents and other necessary confirming documents, and to enter an Order of Dismissal with Prejudice and Without Costs In Spokane County Superior Court Cause No. 20-2-03213-32 and dismiss the appeal of summary judgment granted In Spokane County Superior Court Cause No. 20-2-03199-32.

4. The RLCA Board has authorized this Agreement by a formal resolution attached hereto. The Agreement shall become effective upon signing by the parties below, without the need for an approving vote by the RLCA general membership.

[CP 5-6]

Shortly after the November 9, 2021 Mediated Settlement Agreement was executed with an effective date of November 9, 2021, Respondents asserted that

the it was not binding and refused abide by its terms. On January 25, 2022, the Court of Appeals Issued its decision and awarded attorney fees to Respondents pursuant to RAP 18.9(a). On May 31, 2022, the Honorable Harold Clarke III in Cause No. 20-2-03213-32 entered an order granting Appellant's motion to enforce the mediated settlement agreement and ruled that the parties were bound by its terms. (CP 10-11)

After the Mandate was issued by the Court of Appeals, a hearing for entry of judgement for attorney fees and costs was set for June 17, 2022, in Cause No. 20-2-03199-32. (CP 12-17)

On June 8, 2022, Appellant filed a motion to stay entry of judgment pursuant to the terms of the November 9, 2021, Mediated Settlement Agreement. (CP 12-17) Respondents opposed Appellant's motion and sought entry of judgment in breach of the Mediated Settlement Agreement. (CP 38-39; 18-21; 22-29)

THE COURT: Counsel, I'm just going to – I apologize. I'm just going to cut you off and make my ruling. Judicial canons permit judicial officers to converse. I discussed this

with Judge Clarke. It was not his intention to bind this Court. So I'm going to deny the stay at this time.

[RP 11 at //10-16]

THE COURT: Okay. Thank you. So let me -- I wish I could share this with you. I have a judgment. It looks like a proposed judgment by Gravis Law indicating a total amount of \$14,777.50 against James Powers.

[RP 17 at //12-18]

Then, the trial court encouraged the parties to settle, notwithstanding that the trial court was at that moment refusing to enforce the Mediated Settlement Agreement:

THE COURT: All right. I'm striking No. 2, and total amount shall bear interest of 12 percent. So I'm signing that, Counsels, and dating it for today. I do apologize that I had to ask the attorneys to be brief, and that's not how I like to run the docket. But out of necessity based on my current position and having a number of transport cases, in-custody cases, I had to be brief. So please forgive me for that. I did review this thoroughly, and I also read the Court of Appeals' decision. I wish all parties involved the best. I signed off on this judgment. Is

there anything else you are expecting me to sign today?

MR. LLOYD: Your Honor, if I may, would you entertain a motion for additional attorney's fees supported by the declaration of counsel related to this hearing and the motions connected to it?



THE COURT: Counsel, at this time, I'm going to -- I'm going to call this done in the spirit of I hope you can all come to a settlement. We're just going to end it here if that's okay. Thanks, Counsel. I appreciate it. Good luck to you all.

(RP 19 //3-25)

And so, rather than enforce the Mediated Settlement Agreement, the trial court entered judgement against Appellant on June 17, 2022. (CP 38-39)

Appellant paid the judgment, and this appeal timely followed on July 14, 2022. (CP 42-43; 44-53)

ARGUMENT

A. Standard of Review.

Orders regarding enforcement of a CR 2A settlement agreement are reviewed *de novo*, as with a

summary judgment order. *Condon v. Condon*, 177 Wn.2d 150, 162, 298 P.3d 86 (2013).

B. The Trial Court Erred In Refusing To Enforce The Mediated Settlement Agreement.



1. Settlement agreements are reviewed de novo.



The party moving to enforce a settlement agreement has the burden of proving that no genuine dispute exists over the existence and material terms of the agreement. *Kosrovani v. Roger Jobs Motors, Inc.*, not published at 18 Wn. App. 1013, 2021 WL 2808996 (July 6, 2021) (citing *Brinkerhoff v. Campbell*, 99 Wn. App. 692, 696-97, 994 P.2d 911 (2000)).

The court views the evidence in the light most favorable to the nonmoving party to determine whether reasonable minds could reach but one conclusion. *Kosrovani, supra* (citing *Condon*, 177 Wn.2d at 162).

If the nonmoving party raises a genuine issue of material fact, a trial court abuses its discretion if it enforces the agreement without first resolving such issues following an evidentiary hearing. *Kosrovani, supra* (citing *Brinkerhoff*, 99 Wn. App. at 697).

2. The CR 2A mediated settlement agreement is enforceable.

“The purpose of CR 2A is to give certainty and finality to settlements.” *Condon*, 177 Wn.2d at 157. “The purport of an agreement is disputed within the meaning of CR 2A if there is a genuine dispute over the existence or material terms of the agreement.” *Cruz v. Chavez*, 186 Wn. App. 913, 919-20, 347 P.3d 912 (2015). “A litigant's remorse or second thoughts about an agreement is not sufficient” to create a genuine dispute. *Lavigne v. Green*, 106 Wn. App. 12, 19, 23 P.3d 515 (2001). “Where the CR 2A requirements are met, a motion to enforce a settlement is a commonly accepted practice.” *Condon*, 177 Wn.2d at 157.

Normal contract principles apply to the interpretation of a CR 2A settlement agreement. *Morris v. Maks*, 69 Wn. App. 865, 868-69, 850 P.2d 1357 (1993). Interpretation of the language of a contract is reviewed *de novo*. *In re Marriage of Pascal*, 173 Wn. App. 836, 841, 295 P.3d 805 (2013). The primary objective of contract interpretation is to determine the parties’

mutual intent at the time they executed the contract. *Viking Bank v. Firgrove Commons 3, LLC*, 183 Wn. App. 706, 712, 334 P.3d 116 (2014). The Court focuses on the objective manifestations of the agreement rather than the subjective intent of the parties. *Hearst Commc'ns, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 503, 115 P.3d 262 (2005). “Courts will not revise a clear and unambiguous agreement or contract for parties or impose obligations that the parties did not assume for themselves.” *Condon*, 177 Wn.2d at 163.


In *Kosrovani*, a party to a CR 2A settlement agreement sought to avoid enforcement of the agreement’s terms. Rejecting contentions of unmet conditions precedent and vagueness, the court explained:

Kosrovani next contends that, under the terms of the CR 2A settlement agreement, his execution of a release was a condition precedent to the existence of a valid settlement agreement, and not a promise of future performance. He relies on the clause that reads “[t]his settlement is conditioned upon execution of a full release of all claims.”

He argues that this language evinces only a conditional intent, not a binding one, and that the settlement fails if the release is not executed for any reason. We disagree.

The agreement plainly states that the matter “has been settled” upon payment of the sum of \$15,000. Kosrovani's interpretation would render the mediation process and the CR 2A settlement agreement pointless by giving him free rein to decide at a later date whether or not to actually sign the release he agreed to sign to settle the matter. “Where one construction would make a contract unreasonable, and another, equally consistent with its language, would make it reasonable, the latter more rational construction must prevail.” *Better Fin. Sols., Inc. v. Transtech Elec., Inc.*, 112 Wn. App. 697, 712 n. 40, 51 P.3d 108 (2002) (quoting *Byrne v. Ackerlund*, 108 Wn.2d 445, 453-54, 739 P.2d 1138 (1987)). Kosrovani's execution of the release was the required performance of his promise in the settlement agreement. His failure to execute the release breached that promise.

Kosrovani at *4.

Here, the Mediated Settlement Agreement  expressly settled the instant matter, identifying it by cause number. The trial court's refusal to enforce the agreement had no basis in law or in fact. Nor did the

trial court have a legal basis to enter judgment against Appellant despite the Mediated Settlement Agreement, while simultaneously encouraging the parties to settle. The judgment should be vacated, and this matter should be remanded with instructions that the Mediated Settlement Agreement be enforced.

C. Pursuant To The Mediated Settlement Agreement, Appellant Should Be Awarded Costs And Fees.

When a contract provides for attorney's fees and costs, the court shall award them to the prevailing party. RCW 4.84.330. The Mediated Settlement Agreement provides, in pertinent part, that "the generally prevailing party shall be entitled to its reasonable attorney's fees and costs associated with enforcing the Settlement Agreement." (CP 5)

Therefore, Appellant requests an award of his costs and attorney's fees expended in enforcing the CR 2A Mediated Settlement Agreement before the trial court and before this Court.

CONCLUSION

The Mediated Settlement Agreement is enforceable, and the trial court erred in refusing to enforce it, instead entering judgment against Appellant. This Court should reverse the entry of judgment against Appellant, and remand with instructions that the Mediated Settlement Agreement be enforced. This Court should also award Appellant costs and attorney's fees, pursuant to the Agreement.

The undersigned certifies that this Reply contains 2,811 allowable words, pursuant to RAP 18.17.

Submitted this 7th day of November, 2022,

KSB LITIGATION, P.S.

By: 

William C. Schroeder, WSBA 41986
Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of November, 2022, I caused to be served a true and correct copy of the foregoing Brief of Appellant via Washington State Appellant Court's Secure Portal Electronic Filing System for the Court of Appeals, Division III, as well as to the following:

None



William C. Schroeder

KSB LITIGATION

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