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8 IN THE DISTRICT COURT OF THE STATE OF WASHINGTON  
9 IN AND FOR THE COUNTY OF OKANOGAN

10 CHRISTIAN HOPKINS,

11 Plaintiff,

12 v.

13 PINE FOREST HOA BOARD,

14  
15 Defendant.

NO. 26564SC

FINDINGS OF FACT &  
CONCLUSIONS OF LAW  
IN SUPPORT OF SMALL CLAIMS  
DECISION

16  
17 This matter came before this Court for a small claims trial on January 2, 2019, in  
18 which Christian Hopkins testified for the Plaintiff, and Heather Dean testified for the  
19 Defendant. Plaintiff alleges a breach of covenants and by-laws and contends  
20 Defendant misused HOA funds to pay for fire suppression work done on individual lots  
21 in 2015 and 2016. Plaintiff contends HOA funds should only have been used to pay for  
22 such work in common areas. Plaintiff is seeking \$936 in damages.<sup>1</sup> Plaintiff calculates  
23 his damages by dividing the total amount of HOA funds used to pay for forest health in  
24 2015 and 2016 by the total number of lots. Defendant denies any damages are owed to  
25 Plaintiff. Defendant argues the HOA board followed the HOA covenants and by-laws  
26 and acted in good faith and the funds expended for forest health benefitted the whole  
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<sup>1</sup> At oral argument, Plaintiff withdrew his claim for punitive damages and only  
1 of 7

2 HOA by helping reduce the risk of catastrophic damage to all homeowners due to fire.

3 The Court having reviewed all the documents and exhibits both sides filed into  
4 the record, having heard testimony and argument, and the Court having weighed the  
5 credibility of the witnesses and evidence, the Court makes the following:  
6

7  
8 **Findings of Fact:**

- 9 1) Christian Hopkins owns a lot and is a member of the Pine Forest Owners  
10 Association ("Pine Forest"). Heather Dean is currently Vice President and Treasurer  
11 of the Board of Directors ("Board") for Pine Forest. She also is a lot owner and  
12 became project manager of the timber-thinning project in 2016.  
13
- 14 2) Several catastrophic fires have affected areas near the properties owned by  
15 members of Pine Forest. Pine Forest, through its Board, has authorized forest  
16 health studies to assess the state of forest health in the community and the  
17 associated risk of fire. Contracted forest professionals have outlined plans of action  
18 to address these risks. See Defendants Exhibit 1. The forest professionals have  
19 determined there is a significant fire risk due to overstocked fire load that has built  
20 up in the area. They have provided Pine Forest with recommendations for plans of  
21 action to address these concerns. Over several years, Pine Forest has been  
22 implementing these plans in order to reduce the risk of catastrophic fire that could  
23 wipe out the community.  
24
- 25 3) There is no evidence that the Board has ignored the recommendations provided  
26 by the forest professionals. There is no evidence the Board gave priority to lots  
27 owned by members of the Board or otherwise. There is no evidence that any  
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seeks \$936 in total damages.

2 favoritism of any kind took place. The evidence shows the Board followed the  
3 directions of forest professionals as far as what areas to target first for forest  
4 maintenance; based on fire danger, load, forest health, lay of the land, and cost.  
5 The Board appears to have made its decisions based on the safety and well-being  
6 of all lot owners as a whole. The 2015 and 2016 plans addressed those areas that  
7 the contracted forest professionals labeled as the highest priority. The Board acted  
8 in good faith and for the benefit of all members of Pine Forest.  
9

10 4) The Board appears to have regularly given updates to the membership of Pine  
11 Forest regarding the timber-thinning project. Plaintiff has not alleged any decisions  
12 were made without following proper protocol, votes of the membership, or  
13 otherwise. Rather, plaintiff alleges the funds used improperly benefited individual lot  
14 owners rather than Pine Forest members as a whole. He alleges the plan put in  
15 place in 2018 is more equitable than the plan that was in place in 2015 and 2016.  
16

17 5) Both Plaintiff and Defendant acknowledge the Board's actions had overwhelming  
18 support from membership. For example, 110 of 135 lots signed agreements and  
19 releases allowing access for the project. Membership surveys also appear to show  
20 large-scale support. See Defendant's Exhibit 1.  
21

22 6) The forest professionals contracted by Pine Forest initially indicated to the Board  
23 that the 2015 and 2016 forest health plans would break even and Pine Forest  
24 would not have to spend any additional Pine Forest funds. Due to market variability,  
25 this ended up not happening and Pine Forest had to spend funds to fully fund the  
26 forest health project in 2015 and 2016. Having experienced this unexpected  
27 shortfall, the Board altered the forest health plans moving forward.  
28

2 7) Reducing the fire load on individual lots benefits all lot owners and not just the  
3 individual lot owner where the actual work occurs. A catastrophic fire moves quickly  
4 through poorly managed forests with have heavy loads. Homes in a community that  
5 is within forested areas face very similar risks of loss during a catastrophic fire.  
6 Consequently, there is a significant shared benefit from reducing nearby fire load,  
7 rather than just an individual benefit on an individual lot. While a small-scale fire  
8 might have more variability of benefit, a large-scale fire begins to carry similar  
9 benefit to all lot owners.  
10

11 8) Pine Forest and individual lots within Pine Forest are governed by a Declaration  
12 of Covenants, Conditions, and Restrictions ("Covenants"). See Plaintiff's Exhibit #1  
13 and Defendant's Exhibit #3. Chapter XI "Enforcement," paragraphs (a), (b) & (c),  
14 govern lawsuits in part. Section (c) allows Pine Forest to enter lots that are violating  
15 the Covenants, abate the violation, and bill the cost to the lot owner. Chapter VI  
16 "Architectural Committee," paragraph (c), provides limitation of liability for the  
17 Architectural Committee and individuals on that committee if they have acted in  
18 good faith.  
19

20 9) Title VII "Members Association," paragraph (b) "Association Purposes," provides  
21 Pine Forest's "general purpose ... is to further and promote the community welfare  
22 of property owners....[Pine Forest] is to be responsible for the operation,  
23 maintenance, repair and upkeep of Common Areas and community facilities...."  
24

25 10) Chapter VII "Members Association," section (d) "Association Expenses and  
26 Power to Assess," paragraphs (i) & (ii), allow the Board to set annual charges that  
27 Pine Forest can assess to individual lot owners. Paragraph (vii) directs that these  
28 funds be applied toward the payment of expenses "in the operation and

2 maintenance of its properties and in furthering and promoting the community  
3 welfare of property owners in the Unit or the Subdivision.” There is no restriction  
4 that these funds can only be used inside of common areas.<sup>2</sup>

5  
6 11) Chapter IV, “General Covenants,” paragraph (h), prohibits an individual lot owner  
7 from removing any tree with a trunk larger than three inches in diameter without  
8 prior written approval by the Architectural Committee except for areas set aside for  
9 the construction of residence, barn, stable or driveway. Chapter V, “Required  
10 Approval of All Changes to Property Within the Unit or Subdivision,” paragraph (a)  
11 “Approval of All Changes to Property Required,” requires approval for “the clearing  
12 of trees, shrubs, or other growing things.” Paragraph (b) provides the criteria for  
13 Board approval for change; which includes criteria such as safety, visual continuity  
14 and to make sure it is “in harmony with the rustic and natural setting of the areas  
15 and will serve to preserve and enhance existing features of natural beauty.”

16  
17 12) Pine Forest’s By-Laws, Section 1 “Purpose,” confirms the primary purpose that is  
18 also set out in the covenants: “to further and promote the common interests and  
19 welfare of its members.” Defendant’s Exhibit 4. Section 2 “Powers,” outlines the  
20 powers of Pine Forest: “The Association shall do whatever is necessary, conducive,  
21 incidental or advisable to accomplish and promote its object and purposes....” Id.  
22 Several powers are outlined in Section 2 of the By-Laws, including but not limited  
23 “to care for vacant, unimproved and unkept lots.” Id.  
24

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26 <sup>2</sup>Plaintiff has not actually shown that any forest work was done outside of  
27 “common areas.” “Common Areas” are defined in Chapter I, “Land  
28 Classifications and Definitions”, paragraph (b). Plaintiff has not provided  
the recorded plat defining common areas, nor has provided proof of what work,  
if any, was done outside of those defined common areas. Plaintiff has not  
shown what funds funded work that was actually outside of common areas.  
However, for purposes of this dispute, the Court will assume such forest work  
has been done within individual lots but outside of common areas within those  
lots. The Court’s decision is not affected by this assumption.

2 13) Pine Forest's Board acted under proper authority of the Covenants and By-Laws,  
3 acted in good faith, and funds were properly used to benefit Pine Forest's  
4 membership as a whole.

5 **Conclusions of Law:**

6  
7 1) District Court's "Civil Court" is a constitutionally created court and has concurrent  
8 jurisdiction with Superior Court for cases in equity. Wash.Const., Art. 4, § 6. A  
9 court sitting in equity has the ability to use equitable remedies, such as the  
10 power to grant injunctive relief. 15 *Wash.Prac.* Civil Procedure §44:7 (2d ed.)  
11 (2017). For example, a court sitting in equity can order a litigant to do something  
12 or order a litigant to refrain from doing something.

13  
14 2) In contrast, District Court's "Small Claims Court" is a legislatively created court  
15 sitting in law and its jurisdiction is limited by the state legislature and only legal  
16 remedies are available. Small Claims Court's jurisdiction is limited to "the  
17 recovery of money only." RCW 12.40.010. The jurisdiction and remedies  
18 available in Small Claims Court have been severely restricted by the legislature  
19 in order to promote "speedy and quick justice between the litigants." RCW  
20 12.40.090.

21  
22 3) A homeowners association "is governed by its restrictive covenants, its articles of  
23 incorporation, its bylaws, and Washington state laws." *Casey v. Sudden Valley*  
24 *Community Ass'n*, 182 Wn.App. 315, 319 (2014). RCW Chapter 64.38 governs  
25 homeowners associations. RCW 64.38.025 provides the degree of care and  
26 loyalty that a board of directors of a homeowners association owes to members.  
27 That statute also lays out prohibited and allowed activities of such a board of  
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2 directors. RCW 64.38.020 sets out the powers that a homeowners association  
3 may exercise unless the association's governing documents provide otherwise.

4 RCW 64.38.050 outlines available remedies for violations of Chapter 64.38.

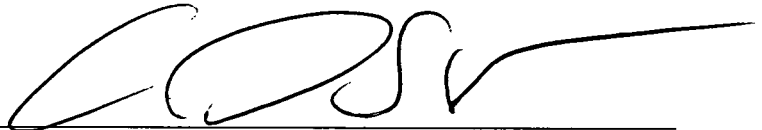
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6 4) In this case, the Board acted with proper authority to reduce fire danger for the  
7 homeowners' association membership as a whole. Funds were utilized in  
8 accordance to the provisions of the Covenants, By-Laws and Washington State  
9 law. The Board acted in good faith with the well-being of the membership as a  
10 whole, foremost in mind. The actions of the Board reduced the fire danger for all  
11 members, rather than just for a small minority of membership. All members  
12 benefited from the forest health and timber-thinning project. Moreover, these  
13 actions furthered one of the primary goals outlined in the Covenants, namely that  
14 of preserving and enhancing existing features of natural beauty within the  
15 community. The health of the forest is very important to that goal as well as  
16 important to the continued safety of individuals and structures within that  
17 community.  
18

19 5) Plaintiff has not met his burden showing a breach of the Covenants or By-Laws.  
20

21 Therefore, it is **ORDERED**:

22 1) The Court rules in favor of the Defendant. Plaintiff's claim is denied. Plaintiff  
23 collects nothing on his claim. Plaintiff is not entitled to any costs.  
24

25 DATED this 21 day of July, 2019.

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Judge Charles D. Short