

The Honorable LeRoy McCullough, Dept. 32

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

ROBERT MASON and KAREN MASON,
husband and wife; JAMES A. ARNOLD and
ELIZABETH A. ARNOLD, husband and wife;
EVERARDO RUIZ and JONALYN RUIZ,
husband and wife; and LEI KONG and FAN
YANG, husband and wife,

Plaintiffs,

v.

BAOCHENG CHU and XU PENG, husband
and wife,

Defendants.

CASE NO. 23-2-20091-8 SEA

ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

~~[PROPOSED]~~

Trial Date: 10/21/2024

THIS MATTER came before this Court on Defendants' Motion for Summary Judgment. The Court has considered all papers filed in support of and in opposition to the Defendants' Motion for Summary Judgment and argument presented by the parties.

NOW, THEREFORE, IT IS HEREBY ORDERED that Defendants' Motion for Summary Judgment is GRANTED, and this lawsuit shall be DISMISSED WITH PREJUDICE following the Court's resolution of Defendants' forthcoming fee motion. Said motion shall be filed within 30 days of the date of this Order. *Addendum incorporated by reference.*

ORDER GRANTING DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT [PROPOSED] - 1
[23-2-20091-8 SEA]

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1 IT IS SO ORDERED.

2 DATED this 5th day of August, 2024.

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5 JUDGE LEROY MCCULLOUGH
6 KING COUNTY SUPERIOR COURT JUDGE

7 **Presented by:**

8 SUMMIT LAW GROUP, PLLC
9 *Attorneys for Defendants*

10 By s/ Jessica L. Goldman
11 Jessica L. Goldman, WSBA #21856

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

Order on Summary Judgment ADDENDUM

ROBERT MASON ET UX, ET AL.,
Plaintiffs

v.

Case No. 23-2-20091-8 SEA

BAOCHENG CHU AND XU PENG,
Husband and wife, Defendants

1. This matter came on for hearing before the undersigned on August 2, 2024. Following extensive argument of counsel and the at the invitation of this court, the parties agreed to waive oral ruling. This written summary decision accordingly follows and is incorporated by reference into the appended ORDER.
2. The Defendants' Motion for Summary Judgment is Granted. CR 56.
3. When a motion for summary judgment is made and supported by affidavits setting forth such facts as would be admissible in evidence, an adverse party may not rest "upon mere allegations or denials... but a response...must set forth specific facts showing that there is a genuine issue for trial." CR 56(e).
4. Homeowner discretionary decisions that are procedurally valid discretionary are to be given deference "absent a showing of fraud, dishonesty or incompetence." *Bangerter v. Hat Island Community Association*, 199 Wn. 2d 183 (2022).
5. This record reflects much speculation but there is no fact-based showing of fraud, dishonesty or incompetence.
6. No genuine fact issue that are material to this matter were presented. Plaintiffs did raise questions regarding fair and proper procedures, and they questioned the CRC's good faith in approving the proposal. For example, there was speculation that the CRC Chair had an improper relationship with the applicants-defendants; and that the Chair's actions of approval were motivated by self-interest. Further, that the CRC decision-makers labelled the project opponents as instigators. Plaintiffs also urged that an improper camera function was used to capture an inaccurate view from the affected properties.
7. The Declarations of record present a different perspective, however. They show the CRC's deliberate consultations with the plaintiffs and other Somerset residents. Notwithstanding the camera and lens option complained-of, the record shows that all 5 CRC members engaged in on-site visits and personal views of and from each of the plaintiffs' residences to ascertain the impact of the proposed development.
8. In context, then, the questions raised present as speculation and conjecture. They are not genuine or specific facts showing that there is a genuine issue for trial.
9. Further, this court considered, *inter alia*, the specific Declarations of Diane Fern, Jiayi Chen and Gary Albert. Fern was chair of the Covenant Review Committee (CRC) until 2022. She authored a host of decisions that approved and disapproved applications for modifications in the Somersat Plat. Her decisions per Declaration emphasized adherence to the View Guidelines.
10. The Chen Declaration was of similar effect, i.e. that the 2016 View Guidelines were used to evaluate defendants' proposal.

11. The Albert Declaration provided more of a historical perspective, indicating that in his role as 2008 CRC Chair, he oversaw the approval of the View Guidelines that were designed to protect specified vistas that were above the view lines, e.g. lake, mountain and city views.
12. Per Section 4 of the Covenants, Conditions and Restrictions, the CRC "shall have the right to" consider such other variables as vicinity harmony, building material and color scheme; and the view of surrounding building sites. Such consideration, however, is not required or determinative.
13. The record reflects no factual support that the CRC was improperly constituted or that it engaged in improper conduct.
14. Accordingly, defendants' CR 56 motion for summary judgment is granted and the trial date of October 21, 2024 is stricken.

Entered this 5th day of August, 2024

 Judge