101236-5

NO. 83064-3 I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

SKYLER WALDAL,

Petitioner,

vs.

KEYSTONE RV COMPANY, a foreign corporation,

Respondent.

PETITION FOR REVIEW

LAW OFFICES OF
EUGENE N. BOLIN, JR., P.S.
Eugene N. Bolin, Jr., WSBA #11450
144 Railroad Avenue, Suite 308
Edmonds, WA 98020
425-582-8165
eugenebolin@gmail.com
Attorney for Petitioner

TABLE OF CONTENTS

I. INTRODUCTION, IDENTITY OF PETITIONER, AND COURT OF APPEALS DECISION WARRANTING REVIEW 1

A. Introduction 1

B. Identity of the Petitioner 6

C. Court of Appeals Decision Warranting Review 6

II. ISSUES PRESENTED FOR REVIEW 7

III. APPLICABLE STANDARD OF REVIEW 7

IV. STATEMENT OF THE CASE 8

V. WHY REVIEW SHOULD BE ACCEPTED 16

A. The Decision by the Court of Appeals 16

B. The Duties of a Warrantor of Products 19

C. Keystone's Entire Argument that Petitioner Refused to Cooperate Rests on Unsupported Claims by Keystone Itself 23

VI. CONCLUSION 24

Appendix

TABLE OF AUTHORITIES

Cases

Bryce v. Lawrence (In re Bryce), 491 B.R. 157, 184-185 (U.S.B.C. for the WDW 2013 17

Cunningham v. Fleetwood Homes of Ga., 253 F.3d 611, 620-621, 2001 U.S. App. LEXIS 11759 (11th Cir. 2001) 23

Pac. Nw. Shooting Park Ass'n v. City of Sequim, 158 Wn.2d 342, 352, 144 P.3d 276 (2006) 23

Schroeder v. Excelsior Mgmt. Grp., LLC, 177 Wn.2d 94, 104 (2013).....7

Wilson v. Semling-Menke Co., 277 Neb. 928, 766 N.W.2d 128 (2009) 20

Young v. Toyota Motor Sales, USA, 9 Wn.App 2d 26 at fn. 8; 442 P.3d 5 (2019).....17

Statutes

Auto Dealers Act (RCW 46.70.140).....16, 17, 18, 19

Consumer Protection Act (RCW 19.86, *et seq.*) 16, 17

Federal Trade Commission Act 23

Magnuson-Moss Warranty Act (MMWA), 15 U.S.C.S. §§ 2301 to 2312 .....20, 21, 22, 23

RCW 46.70.005 19

RCW 46.70.011(16) 19

RCW 46.70.180(10) 20

Regulations

16 CFR 701.3(a) 21

CFR 701.3(a) 22, 23

Rules

CR 8(a) 23

I. INTRODUCTION, IDENTITY OF PETITIONER, AND COURT OF APPEALS DECISION WARRANTING REVIEW

A. Introduction

The Petitioner, Skyler Waldal, is a resident of Snohomish County. In August of 2016, he purchased a new, Keystone "Fuzion" RV, over 40' long, from a Keystone authorized dealer in Portland, Oregon, Curtis Trailers. The total sale price of the RV was $75,337 and the RV was warranted against defects "in materials and workmanship" for a period of one year. (CP 1898-1900).

The Petitioner and his father towed the RV back to Snohomish County without incident. However, and unbeknownst to the Waldals, the RV was structurally defective on delivery. Two of the three axles on the RV were installed too close to each other. The result was that the two of the three tires on the RV came into contact with each other on uneven surfaces, causing those two tires to

lock-up. This made the RV unsafe to operate on roadways.

Keystone admits that the RV is defective and that necessary repairs are covered by its one-year limited warranty. Keystone has thus far refused to acknowledge its own expert's testimony (James Keough) that the RV is unsafe to move on roadways.

Keystone warranty service is performed by its authorized dealers. (CP 673-677). A dispute arose after the defect was discovered, as to whether the Petitioner would be required to return the RV to Curtis Trailers in Portland, or another authorized Keystone dealer. The Petitioner reasonably believed it was unsafe to tow the RV for any significant distance, given the defect. Keystone's own expert testified that he would not tow the RV because the defect made the RV dangerous to move on roadways. It did not matter; Keystone could not provide an authorized

dealer willing to make the substantial repairs necessary to cure the defect. (CP 1503 and 1504).

Petitioner notified Keystone of the defect soon after buying the RV. In the sixteen (16) months following the purchase of the RV, but before filing the complaint, the Petitioner repeatedly communicated with Keystone and its representatives to obtain the benefit of Keystone's warranty. (CP 664-670). During this entire time, Keystone refused to acknowledge that it was dangerous to tow the RV, or provide any alternative to warranty service by an authorized dealer. Keystone repeatedly claims that it was prevented from providing on-site warranty service, but there is *no evidence* in the record to support this claim. In fact, Keystone's first significant offer to the Petitioner to repair the defect under its warranty, occurred in a letter from Keystone's counsel dated November 21, 2017. (CP 1506) (*See* discussion *infra*).

Keystone's warranty process is a labyrinth calculated to make warranty service as complex as possible for the consumer. This is described in the Petitioner's opening brief in the Court of Appeals. (Petitioner's Brief at 15-29). Although consumers are directed to contact Keystone's Call Center about problems with their RV, the Call Center only *records* calls from consumers and does not initiate warranty or other service for any consumer. In fact, Keystone's speaking agent, Stephen Holmes, testified that Keystone employees are instructed to use "scripts" in conversations with consumers. The purpose is to "de-escalate" problems reported to the Call Center by consumers. (CP 297, 303-306). This, and other methods of discouraging consumer warranty claims, were described in the Petitioner's motion for reconsideration of the summary judgment. The Petitioner took the depositions of three Call Center employees, whose testimony was

provided in support of the Petitioner's motion. None of this is disclosed to consumers.

Keystone finally authorized an extremely limited repair at an independent repair facility, Truck Trails in Mukilteo, which is qualified to perform RV repairs. Truck Trails is also located very close to the Petitioner's storage site for the RV. Keystone clearly undertook warranty service on the RV at Truck Trails, but it would not authorize a full repair. Truck Trials' owner testified that they had the same problems obtaining authorization for warranty coverage and payment that the Petitioner experienced. (CP 1560-1567; CP 1544-1558). Keystone's own expert testified that the entire suspension of the RV required replacement to make it safe. (CP 1580). Yet Keystone authorized the replacement of a *single* bolt on the suspension—that's all. (CP 1564 and CP 1503). Clearly, Keystone could have authorized Truck Trails, to replace

the suspension, as its own expert recommended. But Keystone refused to do so.

Keystone claimed in its motion for summary judgment that the Petitioner refused to allow Keystone to attempt repairs, and this claim was adopted by the trial court in its order granting summary judgment. (CP171-176; 175 at lines 1-8). In its unpublished opinion, the Court of Appeals affirmed the trial court's order granting summary judgment. The Petitioner now seeks review by the Supreme Court.

B. Identity of the Petitioner

The Petitioner seeking review is Skyler Waldal.

C. Court of Appeals Decision Warranting Review

Division I filed its opinion on August 1, 2022. *See* Appendix A-1 to A-11. The trial court's order granting summary judgment is reproduced at A-12 to A-17. The trial court's order denying the Plaintiff's first and second motion for reconsideration is reproduced at A-18 – A-21.

The trial court's order granting Keystone's motion for clarification is reproduced at A-22 – A-24.

II. ISSUES PRESENTED FOR REVIEW

The issues presented for review are:

1. Is it unreasonable for a manufacturer of vehicles to require all warranty service be performed exclusively at its authorized dealerships, when an admitted defect makes it unsafe to move the vehicle to such a dealership? (Yes).

2. Must a vehicle manufacturer provide a reasonable option for the warranted repairs of defects by authorized dealers, when a vehicle cannot be moved safely to a dealer as a result of the defect? (Yes).

3. Is it unreasonable for a manufacturer deny the warranted repair of a defect which makes a vehicle unsafe to move on roadways, solely because the vehicle could not be safely moved to an authorized dealer? (Yes).

III. APPLICABLE STANDARD OF REVIEW

Questions of law and summary judgment rulings are reviewed *de novo*, taking all the inferences in favor of the nonmoving party. *Schroeder v. Excelsior Mgmt. Grp., LLC*, 177 Wn.2d 94, 104 (2013)(citations omitted). "Summary

judgment is appropriate only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Id.*

IV. STATEMENT OF THE CASE

The facts supporting Petitioner's claims in the trial court are set forth in his complaint, dated December 6, 2017. The Petitioner's complaint alleged:

> While traveling on uneven surfaces, the tires on two of the three axles on the RV frequently come into contact with each other, immediately locking up two of the three tires on one or both sides of the RV. This causes the RV to skid and go sideways and is especially dangerous in snow and ice.

(CP 132-133, par. 2.9).

The complaint also alleged:

> 2.11 The Plaintiff contacted Curtis [the selling dealer in Oregon] and Keystone to report these problems and discuss repairs of the defects under the RV's warranties. The Plaintiff was unwilling to return to [Curtis in] Portland, Oregon for the warranty work, given what he knew about the rear wheels locking up. Curtis and Keystone therefore instructed the plaintiff to take the RV to Truck Trails Northwest, LLC, In Lynnwood, WA.

2.12 After repeated contacts with various employees at Truck Trails, it became apparent that Truck Trails would be unable to provide the warranty repairs necessary to make the RV safe. The plaintiff believes this is largely a result of Keystone's refusal to provide meaningful service under the RV's warranty.

2.13 The plaintiff repeatedly reported and attempted to resolve all of these problems with all of the defendants without success.

(CP 133).

* * *

2.18 In the sixteen (16) months since the plaintiff bought the RV, it remains defective and unsafe to use. The defendants have been aware of the safety defect for almost the entire time, but none of them have been willing to repair the RV under Keystone's warranty.

(CP 134).

* * *

2.20 A Keystone representative finally inspected the plaintiff's RV in September of 2017 and acknowledged that the RV was indeed defective and unsafe to use on roadways. Even then, Keystone failed to repair the RV under its warranty.

(CP 135).

* * *

> 3.1 . . . The plaintiff reserves the right to amend this complaint as necessary to re-allege specific causes of action against the defendants, once discovery has been completed.

(CP 141).

Keystone's answer to the complaint is found at CP 360-370. Although the nine-page answer includes numerous affirmative defenses, there is *no allegation* that Petitioner refused to disclose the location of the RV, or that he otherwise refused to cooperate with Keystone in the warranty process. Nor is there any such evidence in the record of this case which predates the filing of the Petitioner's complaint.

Keystone's express limited warranty provides that Keystone will repair manufacturing defects which are not excluded by coverage. (CP 1898-1900). During the summary judgment proceedings, Keystone admitted that the Petitioner's RV was defective and that the defect was covered by the warranty. (CP 11 at lines 23-25). Keystone

also acknowledged that it may elect to replace the RV, or pay the diminution in value, rather than repair a defective RV. (CP 11, line 26, to CP 12, line 1). Keystone did none of these things between the time that the Petitioner first reported the structural defect in early September of 2016, and the date that its counsel began corresponding with Petitioner's counsel over one year later.

On November 16, 2018, Keystone filed a motion for summary judgment seeking the dismissal of all of the Petitioner's claims against it. The Petitioner filed a response, and then a supplemental response, providing evidence that Keystone had withheld highly material discovery responses. Specifically, the Petitioner provided evidence of some sixty (60) different communications between Keystone, its dealers, a supplier, Curtis Trailers, and the Petitioner, *all relating to the warranty claim.* There was no mention in any of these communications that the Petitioner refused to cooperate in the warranty process, or

that the Petitioner would not disclose the location of his RV. The Petitioner urged the trial court to dismiss Keystone's motion and impose sanctions for the resulting prejudice to the Petitioner. The trial court denied the Petitioner's requested relief. (CP 10 at pars. 1 and 2).

The trial court entered its order granting Keystone's motion *in toto*, on November 26, 2018, without a single revision or modification to Keystone's proposed language. (CP 8-13). Keystone's proposed order included sweeping conclusions of fact blaming the Petitioner for Keystone's failure to provide warranty service, with *no citations* to the record. The order was followed by two motions for reconsideration by the Petitioner and a motion for "clarification" by Keystone. The court denied Keystone's motion to dismiss the Petitioner's allegations that Keystone breached its express warranty, but then reversed itself on Keystone's motion for "clarification." (CP 273-275). As a

result, all twelve (12) causes of action alleged by the Plaintiff were dismissed by the trial court.

In affirming the trial court's ruling, the Court of Appeals focused its attention on Keystone's evidence that the Petitioner failed to cooperate in the warranty process, including a letter dated February 8, 2017 from the Petitioner to Keystone. The letter was written more than five months after the Petitioner reported the structural defect to Keystone, without any action by Keystone. In his letter, the Petitioner demanded the replacement of the RV, or a refund. There is no indication in the letter that the Petitioner is refusing to cooperate in the warranty process; only an assertion that he will retain counsel if Keystone continues to ignore the Petitioner's warranty claim.

"Keystone acknowledge[d] that the RV at issue here contains a defect, and that *the defect is covered under the warranty.*" (CP 11 at lines 24-25). *(Emphasis added).* Nevertheless, on November 26, 2018, the trial court

entered Keystone's proposed Order, granting its motion for summary judgment. (CP 8-13). The trial court did so on the basis of a single *factual* claim by Keystone, which the trial court adopted in its order granting summary judgment:

> "Plaintiff has failed to permit Keystone a *reasonable opportunity* to repair the defect, and the evidence submitted by both parties demonstrates that Plaintiff failed to maintain *reasonable* and consistent contact with Keystone regarding diagnosing and repairing the RV, including a failure to respond to communications from Keystone between February and July of 2017."

(CP 12 at lines 1-5)(*emphasis added*).

On March 28, 2019, the trial court entered an order on the Petitioner's motions for reconsideration. (CP 63-66). The court *reversed* its order dismissing Mr. Waldal's cause of action for breach of express warranty (pg. 3, par. 2), but declined to reconsider any other part of its November 26 Order. The court explained its rationale:

> In its discussion section [of the November 26 Order], the Court

> addressed the fact that the claims were not yet ripe as Keystone agents had not been afforded a *reasonable* opportunity to repair the RV. . . As it appears that *Keystone agrees that the repairs should be completed*, but that the RV has not yet been presented to a Keystone authorized dealer for repair, it would not be *equitable* to dismiss the claim as to the Express Warranty with prejudice."

(CP 64 at lines 17-21)(*emphasis added*).

From this, it is apparent that the trial court engaged in weighing the facts of the case, which is unquestionably impermissible in summary judgments. *See* discussion *infra*.

Keystone then filed a motion for *clarification* of the trial court's March 28 order, which the court granted on April 9, 2019. The trial court granted the motion (CP 67-69), which actually changed the substance of the March 28 order in the following ways:

1. The trial court limited the Petitioner's breach of express warranty claims to *future* claims only. However, Keystone's one-year warranty expired on August 4, 2017—almost two years earlier.

2. The trial court further limited any express warranty claims to those that become *ripe.*

V. WHY REVIEW SHOULD BE ACCEPTED

A. The Decision by the Court of Appeals

The Court of Appeals filed its decision on August 1, 2022, and focused on the Plaintiffs' allegations of breach of express warranty, breach of the Auto Dealers Act (RCW 46.70.140), and breach of the Consumer Protection Act (RCW 19.86, *et seq.*). Op. at 4. The Court of Appeals affirmed the trial court's dismissal of the Petitioner's claims for breach of express warranties on the purported basis that the Petitioner would not reveal the location of the RV for an inspection by Keystone. Op. at 6. However, Keystone's claim that the Petitioner refused to disclose the existence of his RV, or that he otherwise refused to cooperate in the warranty process, is completely lacking evidentiary support. The Petitioner therefore respectfully

requests that this Court reverse this ruling by the Court of Appeals.

The Court of Appeals also affirmed the dismissal of the Petitioner's allegation that Keystone violated the Auto Dealers Act, RCW 46.70.180.[1] The Petitioner specifically cited subsection (10) of section .180, which requires manufacturers and dealers to provide warranty service within a reasonable period of time. Keystone violated this provision of the Auto Dealers Act. In fact, the first specific offer to provide warranty service for the Petitioner's RV, was made in a letter from Keystone's counsel dated November 21, 2017. (CP 1506). This was *sixteen months* after the Petitioner first reported the defect to

[1] The Petitioner's assertion of Auto Dealers Act claims is to establish *per se* violations of the CPA under the stale predicate doctrine. *See, Young v. Toyota Motor Sales, USA*, 9 Wn.App 2d 26 at fn. 8; 442 P.3d 5 (2019) (reversed on other grounds). *See also, Bryce v. Lawrence (In re Bryce),* 491 B.R. 157, 184-185 (U.S.B.C. for the WDW 2013.

Keystone. In his November 21 email, Joe Corr stated: "After talking with my client, it is my understanding that Keystone is asking for an opportunity to try and diagnose and correct any issues Mr. Waldal is having with his unit." There was no suggestion that Mr. Waldal had been uncooperative with Keystone, or that he refused to identify the location of the RV.

Petitioner's counsel responded to Mr. Corr's email (CP 1507), raising questions about a proposed repair: would the repairs be warranted? And, if so, for how long? Counsel for Keystone and the Petitioner continued to communicate over the following months, but could not reach agreement about the details of a repair.

The Court of Appeals also affirmed the trial court's dismissal of the Petitioner's claims that Keystone violated the Consumer Protection Act---which was predicated primarily on the *per se* violation of the Auto Dealers Act. *See* RCW 46.70.310.

B. The Duties of a Warrantor of Products

Washington's Auto Dealers Act regulates various aspects of the sale, warranty and service of vehicles "capable of being moved on a public highway . . . by which any persons or property is or may be transported . . ." RCW 46.70.011(16). This definition includes recreational vehicles. The purpose of the Act is "to promote the public interest and the public welfare, and in the exercise of its police power . . . to regulate and license vehicle manufacturers, distributors, or wholesalers and factory or distributor representatives . . . in order to prevent frauds, impositions, and other abuses upon its citizens and to protect and preserve the investments and properties of the citizens of this state." RCW 46.70.005.

Another section of the Act provides that it is unlawful "[f]or a dealer or manufacturer to fail to comply with the obligations of any written warranty or guarantee given by the dealer or manufacturer requiring the furnishing of

goods and services or repairs *within a reasonable period of time*, or to fail to furnish to a purchaser or lessee, all parts which attach to the manufactured unit, including but not limited to the *undercarriage,* and all items specified in the terms of a sales or lease agreement signed by the seller and buyer or lessee." RCW 46.70.180(10)(*emphasis* added).

Federal law also imposes other obligations on warrantors of products, such as the Magnuson-Moss Warranty Act (MMWA), 15 U.S.C.S. §§ 2301 to 2312. In *Wilson v. Semling-Menke Co.,* 277 Neb. 928, 766 N.W.2d 128 (2009), the Supreme Court of Nebraska summarized the purposes of the MMWA:

> The MMWA provides a remedy for consumers who have suffered damages from a defective product when that product was covered by a written warranty. The purpose of the MMWA was "(1) to make warranties on consumer products more readily understood and enforceable and (2) to provide the Federal Trade Commission (FTC) with means of better protecting

> consumers." Under §2304 of the MMWA, a warrantor must, at the least, remedy a defective product in a reasonable amount of time, and if it cannot be repaired, the consumer may elect either replacement or a refund. If the warrantor fails to repair the product in a reasonable amount of time, then the consumer may recover incidental expenses associated with that failure. And under § 2310 of the MMWA, a consumer may recover damages and attorney fees if he or she prevails in a civil suit.

Id. 277 Neb. at 932.

16 CFR 701.3(a) (promulgated under the MMWA) lists nine specific types of information which a warrantor must provide to consumers. Subsection (5) of that regulation requires a warrantor to provide consumers with:

> A *step-by-step explanation of the procedure which the consumer should follow in order to obtain performance of any warranty obligation*, including the persons or class of persons authorized to perform warranty obligations. This includes the name(s) of the warrantor(s), together with: The mailing address(es) of the warrantor(s), and/or the name or title and the address of any employee or department of the warrantor responsible for the performance of warranty obligations, and/or a telephone number

> which consumers may use without charge *to obtain information on warranty performance*;

CFR 701.3(a)(5). (*Emphasis* added).

In his complaint, the Petitioner *expressly* reserved the right to add additional causes of action once discovery was completed. (CP at 141 at par. 3.31). *See also,* CR 15 (leave to amend is typically "freely granted"). Although the Petitioner did not specifically allege violations of the MMWA in his Complaint, he could therefore likely have amended the complaint to include such claims. The MMWA is relevant to the Petitioner's claims here, because the most significant provisions in the Act pertain to the disclosure of written consumer product warranty terms and conditions, the pre-sale availability of written warranty terms, the authorization of consumer suits for damages and other legal and equitable relief, and the procedures for creating informal dispute settlement mechanisms. The non-disclosure of the information to consumers, required

by CFR 701.3(a), is a violation of both the MMWA and the Federal Trade Commission Act, as an unfair or deceptive act or practice. *Cunningham v. Fleetwood Homes of Ga.*, 253 F.3d 611, 620-621, 2001 U.S. App. LEXIS 11759 (11th Cir. 2001).

It is immaterial that the Petitioner did not specifically plead the MMWA in his complaint. "Washington is a notice pleading state and merely requires a simple, concise statement of the claim and the relief sought." *Pac. Nw. Shooting Park Ass'n v. City of Sequim*, 158 Wn.2d 342, 352, 144 P.3d 276 (2006), citing CR 8(a). This, combined with the Petitioner's explicit reservation to amend his Complaint, permits the Petitioner to argue MMWA law in this Petition.

C. Keystone's Entire Argument that Petitioner Refused to Cooperate Rests on Unsupported Claims by Keystone Itself

Keystone's entire argument in this controversy is predicated on its own, self-serving claims that the

Petitioner refused to disclose the location of his RV, or that he refused to otherwise cooperate with the warranty process. There is simply no evidence to support either claim. In fact, Keystone admits that one of its employees and its RV expert both inspected the RV on Petitioner's property. How can Keystone claim that the Petitioner did not cooperate?

VI. CONCLUSION

Keystone does not deny that Petitioner's RV is structurally defective; or that Keystone caused the defect when the RV was manufactured; or that the RV is dangerous to operate on public roadways as a result of the structural defects; or that Keystone approved warranty repairs at an RV shop very near the Petitioner; or that Keystone declined to approve or perform any warranty repairs beyond the replacement of a single bolt; or that the repairs necessary to repair the structural defects are greater than anything Keystone ever offered; or that

Keystone representatives twice inspected the RV on the Petitioner's property.

The Petitioner respectfully requests that the Court accept review of the decision by the Court of Appeals; that it reverse the decision by the Court of Appeals in its entirety; and that the case be remanded to Snohomish County Superior Court for trial.

I certify that this memorandum contains 3,815 words, in compliance with the RAP 18.17.

RESPECTFULLY SUBMITTED this 31st day of August, 2022.

Eugene Nelson Bolin, Jr., WSBA No. 11450
Counsel for Appellant
Waterfront Park Building
144 Railroad Avenue, Suite 308
Edmonds, WA 98020
425-582-8165
eugenebolin@gmail.com

DECLARATION OF SERVICE

On said day below, I electronically served a true and accurate copy of the ***Petition for Review*** in Court of Appeals, Division I Cause No. 83064-3 I to the following:

Joseph Corr, WSBA #36584
Gretchen J. Hoog, WSBA #43248
Corr|Downs PLLC
100 W Harrison, St., Ste N440
Seattle, WA 98119
206.962-5040
jcorr@corrdowns.com
ghoog@corrdowns.com
Attorneys for Defendant Keystone RV Co.

Copy electronically served via appellate portal to:
Court of Appeals, Division I
Clerk's Office

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED this 31st day of August, 2022, at Edmonds, WA.

Eugene N. Bolin, Jr. WSBA #11450
Counsel for Petitioners
Law Offices of Eugene N. Bolin, Jr., P.S.
144 Railroad Avenue, Suite 308
Edmonds, WA 98020
425-582-8165
eugenebolin@gmail.com

APPENDIX

FILED
8/1/2022
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

SKYLER WALDAL, a single person,

Appellant,

v.

KEYSTONE RV COMPANY, a foreign corporation,

Respondent,

CURTIS TRAILERS, INC., an Oregon corporation; TRUCK TRAILS NORTHWEST, LLC, a Washington company; NUMERICA CREDIT UNION, a Washington corporation; and WESTERN SURETY, a foreign corporation,

Defendants.

DIVISION ONE

No. 83064-3-I

UNPUBLISHED OPINION

DWYER, J. — Skyler Waldal appeals from the summary judgment dismissal of his claims against the manufacturer of his recreational vehicle (RV), Keystone RV Company. Summary judgment was inappropriate, Waldal argues, because genuine disputes of material fact existed concerning whether and how Keystone fulfilled the terms of the RV's limited warranty and whether those methods violated two statutes. Finding no error, we affirm.

I

Skyler Waldal purchased a 41-foot long, triple-axle RV from Curtis Trailers in Oregon on August 4, 2016.[1] The $75,000 RV came with an express, limited warranty from manufacturer Keystone RV Company. Waldal read and signed the warranty when he took possession of the RV. To obtain service under the warranty, Waldal was required to bring the RV to Curtis or, if not feasible, to another dealer or service center recommended by Keystone. Waldal had no questions about the warranty's terms. He hitched the RV to his truck and drove it home to Snohomish County without incident.

The following day, he took the RV on a three-day trip to Central Washington. This, too, was without incident except when he returned home and felt the tires on the RV's rear axles rubbing together while pulling into his driveway. Waldal called Keystone about the tire issue in early September. Keystone told Waldal to contact Curtis or another authorized dealer for service. Waldal contacted a local authorized dealership and was told to bring the RV to Curtis for service. Waldal responded by ending the call.

---

[1] We note that Waldal's briefing fails to comply with basic procedural requirements. First, substantial portions of the record designated and relied on by Waldal were not considered by the trial court on summary judgment. When reviewing a summary judgment order, we "consider only evidence and issues called to the attention of the trial court on summary judgment." Winters v. Quality Loan Serv. Corp. of Wash., Inc., 11 Wn. App. 2d 628, 646, 454 P.3d 896 (2019) (citing RAP 9.12; Kofmehl v. Baseline Lake, LLC, 177 Wn.2d 584, 594, 305 P.3d 230 (2013)). Waldal appeals and assigns error to only the trial court's initial summary judgment decision. Thus, we decline to consider portions of the record not before the trial court when it entered summary judgment. Winters, 11 Wn. App. 2d at 646. Second, Waldal cites as precedential an unpublished 2006 decision from this court despite the prohibition in GR 14.1(a) on doing so. Third, while not explicitly required by RAP 10.3(a), we note that Waldal's briefs fail repeatedly to properly cite cases, for instance, his repeated use of a short cite on first reference to a case. While this third problem does not affect our analysis, we note it to encourage the accuracy of any future submissions to this court.

Waldal contacted Curtis, which told him to bring the RV to Truck Trails, an unauthorized RV repair shop in Snohomish County, for service. He towed the RV there. Although a repair was made, Truck Trails' employees were not able to fix the main problem with the RV. They believed the RV should be brought to one of Keystone's manufacturing facilities for service and could be safely transported there on a flatbed truck.

After this repair, Waldal attempted a wintertime snowmobiling trip with his RV, giving up due only to road conditions. He noticed the tires rubbing together when he got back home. Waldal contacted Keystone again and was told to bring his RV to an authorized dealer. He did not want to tow the RV to Curtis in Oregon because of his concerns about the tires rubbing. Other than his lone visit to Truck Trails, Waldal never brought the RV in for service.

On February 8, 2017, Waldal wrote a letter "to put you, Keystone RV Company on [n]otice" and demanded "replac[ment] [of] the unit with a brand new one or give me my money back." He stated a defect in the suspension "causes the tires to rub and lock up," risking severe injury or death if the RV skidded. He threatened "legal action" if Keystone did not respond within "10 working days."

Keystone's employees contacted him seven days later. Keystone said it needed more information, including the RV's location, to address his concerns. In February, March, and April, Keystone repeatedly asked for the RV's location. Waldal did not provide its location until April 27.

On September 7, 2017, Keystone's products manager, Matt Gaines, flew from Indiana to Washington to personally inspect the RV. This was the first time

a Keystone employee had an opportunity to inspect the RV. In early November, Waldal received a letter from Keystone offering to transport his RV to Keystone's Oregon manufacturing facility to repair "any defects" related to his complaint about the tires rubbing together. Waldal did not accept the offer.

A few weeks later, Waldal filed suit against Keystone. Among other claims, he alleged Keystone breached the warranty and violated Washington's Consumer Protection Act (CPA), chapter 19.86 RCW. Ultimately, Keystone moved for summary judgment. As to the warranty claim, it argued that no breach occurred because Waldal "failed to afford himself [of] the remedies available to him under the Limited Warranty provided for by Keystone." It contended that the CPA claim warranted dismissal because Waldal failed to demonstrate that Keystone committed an unfair or deceptive act. And it sought dismissal of an "Auto Dealers Act" claim listed in the complaint caption and mentioned in passing in a request for remedies. The court agreed with Keystone and granted summary judgment on all claims.

Waldal appeals.

II

Waldal limits his appeal to dismissal on summary judgment of three allegations: breach of express warranty, violation of the auto dealers act, chapter 46.70 RCW, and a CPA claim. We address each in turn.

A

We review a trial court's grant of summary judgment de novo. Dobson v. Archibald, 21 Wn. App. 2d 91, 96, 505 P.3d 115 (2022). We engage in the same

inquiry as the trial court. Dobson, 21 Wn. App. at 96 (citing Benjamin v. Wash. State Bar Ass'n, 138 Wn.2d 506, 515, 980 P.2d 742 (1999)). Summary judgment is appropriate when the movant is entitled to judgment as a matter of law and there is no genuine issue of material fact. Dobson, 21 Wn. App. at 96 (citing Clements v. Travelers Indem. Co., 121 Wn.2d 243, 249, 850 P.2d 1298 (1993); CR 56(c)). We review the evidence in a light most favorable to the nonmoving party. Dobson, 21 Wn. App. at 96 (citing Overton v. Consol. Ins. Co., 145 Wn.2d 417, 429, 38 P.3d 322 (2002)). Despite this favorable review, summary judgment remains appropriate when an alleged factual dispute is based "on speculation or on argumentative assertions that unresolved factual issues remain." White v. State, 131 Wn.2d 1, 9, 929 P.2d 396 (1997); see CR 56(e) (requiring the nonmoving party to "set forth specific facts showing that there is a genuine issue for trial").

B

Waldal contends that the trial court erred by granting summary judgment on his claim for breach of warranty because, "[m]ore than sixteen months after the purchase of the RV and the filing of the complaint, Keystone still had not provided a warranty remedy." Reply Br. of Appellant at 23. We disagree.

The terms of the express warranty are plain and undisputed by the parties. The express warranty is contained in the RV owner's manual, which Waldal received and read when he took delivery of the RV. Chapter one of the manual is entitled "How to Obtain Service." It states that "[t]he Keystone dealer network is the exclusive provider of Parts, Service and Warranty for Keystone RV." An

owner must "[m]ake an appointment to return the unit, at your expense, to your selling dealer for the necessary service." If unsuccessful, then the owner must contact Keystone for service, and

> Keystone may then direct [him] to another dealer or service center for the repairs to be completed. Keystone may, at its option, request that the [RV] be returned to one of its Customer Service facilities in Goshen, Indiana or Pendleton, Oregon where Keystone RV will repair or replace any parts necessary to correct defects in material or workmanship . . . . If the dealer is unable to correct any covered defects that you believe substantially impairs the value, use or safety of your [RV], you must . . . notify Keystone directly of the failure to successfully repair the defect(s) so that Keystone can become directly involved for the purpose of performing a successful repair to the identified defect(s).

Keystone attempted to fulfill these promises. Waldal believed transporting his RV to Curtis was unsafe because of the alleged defect, so he notified Keystone. Keystone sought the location of the RV and other information so it could provide service. After he finally revealed the RV's location months later, Keystone sent an employee from Indiana to Waldal's home in Washington for a multihour inspection of the RV. It is undisputed that this was Keystone's first inspection opportunity. Two months later, Keystone sent Waldal a letter "offering to transport your [RV] to Pendleton, Oregon to allow Keystone the opportunity to diagnose and repair any defects related to this complaint." Waldal understood that Keystone would bear all related expenses. Keystone's offer conformed to its obligations under the warranty. Waldal did not accept the offer.

Rather than explain how this offer did not comply with its warranty obligations, Waldal argues that Keystone's offer is inadmissible under ER 408 because it was part of a settlement negotiation. ER 408 limits admissibility of evidence "offering . . . a valuable consideration in compromising or attempting to

compromise a claim which was disputed as to either validity or amount." But Waldal ignores that Keystone's offer was made before any claim existed. At that time, there were neither parties to a lawsuit nor any claim to settle. And Keystone told Waldal that it was "not seeking a release in exchange for an opportunity to diagnose and repair the unit" because it was "simply seeking an opportunity to try and get [him] back to full use of his unit." ER 408 does not bar our consideration of Keystone's offer.

Waldal avers that Keystone's unreasonable delays caused the warranty's essential purpose to fail, making summary judgment inappropriate. Assuming (without deciding) that the remedy here was exclusive and limited, it is true that an "exclusive limited remedy fails of its essential purpose when there are unreasonable delays in providing the remedy." Am. Nursery Prods., Inc. v. Indian Wells Orchards, 115 Wn.2d 217, 228, 797 P.2d 477 (1990) (citing Lidstrand v. Silvercrest Indus., 28 Wn. App. 359, 365, 623 P.2d 710 (1981)). But Waldal fails to recognize an exclusive limited remedy's essential purpose does not fail "[w]hen there are alternate exclusive limited remedies, such as repair or refund . . . although there was a failure to repair or replace the defective parts." Am. Nursery Prods., Inc., 115 Wn.2d at 229 (citing Marr Enters., Inc. v. Lewis Refrigeration Co., 556 F.2d 951, 955 (9th Cir. 1977)). The remedy of repair was offered, and Waldal declined it. Without more, Waldal fails to show the five-month gap between April 27, 2017—when Waldal finally gave Keystone the information it needed to begin attempting to fulfill the warranty's terms—and

November 16, 2017—when Keystone made its offer—caused the warranty's essential purpose to fail.

On the undisputed record, Waldal fails to show that the trial court erred by concluding that granting summary judgment was appropriate on his claim for breach of warranty.

C

Waldal next contends that the court improvidently granted summary judgment on his claim under the auto dealers act because Keystone delayed warranty repairs. For its part, Keystone responds that summary judgment was appropriately granted because Waldal failed to develop this claim before the trial court.

RAP 2.5(a) provides us discretion to refuse review of any error raised for the first time on appeal. And on review of summary judgment under RAP 9.12, "[i]ssues and contentions neither raised by the parties nor considered by the trial court . . . may not be considered for the first time on appeal." Green v. Normandy Park Riviera Section Cmty. Club, Inc., 137 Wn. App. 665, 687, 151 P.3d 1038 (2007) (citing cases). However, contrary to Keystone's contention, the trial court did consider this argument on summary judgment because Keystone raised it. Thus, we will consider the merits of Waldal's contention.

However, our consideration does not auger success for Waldal because, as Keystone argued to the trial court, he failed to comply with the basic pleading requirements of CR 8. CR 8 requires only "(1) a short and plain statement of the claim showing that the pleader is entitled to relief and (2) a demand for judgment

for the relief to which the pleader deems the pleader is entitled." "'A pleading is insufficient when it does not give the opposing party fair notice of what the claim is and the ground upon which it rests.'" FutureSelect Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc., 175 Wn. App. 840, 865-66, 309 P.3d 555 (2013) (internal quotation marks omitted) (quoting Kirby v. City of Tacoma, 124 Wn. App. 454, 470, 98 P.3d 827 (2004)).

Waldal's complaint fails to surmount these low hurdles. It lists the "Auto Dealers Act" in the case caption. It requests "injunctive relief" and "all relief" under the auto dealers act as a remedy. However, his complaint does not state a legal or factual basis for relief. At best, Waldal elucidated some explanation as to the basis of his claim in his attorney's subjoined declaration to his summary judgment response. Notably, even if it could be seen as providing notice under CR 8, this declaration was later withdrawn. Accordingly, Waldal failed to satisfy the basic pleading requirements of CR 8. FutureSelect, 175 Wn. App. at 865-66 (quoting Kirby, 124 Wn. App. at 470). The trial court did not err by granting summary judgment on this claim.

D

Waldal next argues that summary judgment was inappropriately granted on his CPA claim, either because Keystone violated the auto dealers act or because he alleged a standalone consumer protection violation. We disagree.

"To prevail in a private CPA claim, the plaintiff must prove (1) an unfair or deceptive act or practice, (2) occurring in trade or commerce, (3) affecting the public interest, (4) injury to a person's business or property, and (5) causation."

Panag v. Farmers Ins. Co. of Wash., 166 Wn.2d 27, 37, 204 P.3d 885 (2009) (citing Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wn.2d 778, 784, 719 P.2d 531 (1986)). Although an established violation of the auto dealers act satisfies the first three elements of a CPA claim, see RCW 46.70.310 ("Any violation of this chapter is deemed to affect the public interest and constitutes a violation of chapter 19.86 RCW."), he failed to state such a claim. Thus, he is left to allege an independent violation of the CPA.

Keystone violated the CPA, Waldal avers, because it required that he "endanger himself and others, simply to obtain the benefit of the warranty." Br. of Appellant at 39. As discussed, Waldal is incorrect.

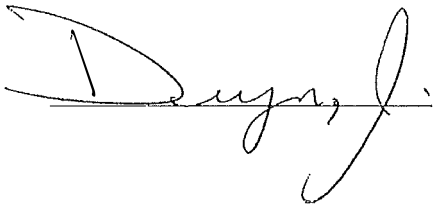
Keystone offered to transport and repair his RV at no cost to him. Waldal did not accept this offer. And, contrary to Waldal's argument, the warranty anticipated the possibility that an RV may be unsafe to transport by providing for the owner to "notify Keystone directly of the failure to successfully repair the defect(s) so that Keystone can become directly involved for the purpose of performing a successful repair to the identified defect(s)." After Waldal provided Keystone with the information it required to become directly involved, it offered to transport his RV. Waldal cites no authority showing that the five-month gap between involvement and offer was unfair or deceptive.[2]

It is undisputed that Waldal did not accept Keystone's offered performance of its warranty obligations. He fails to demonstrate that the warranty's terms

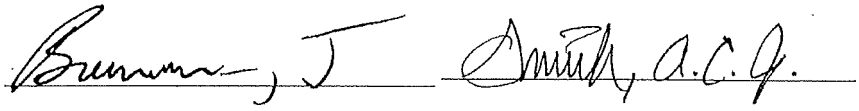
[2] For the first time in his reply brief, Waldal asserts Keystone's "Call Center Is Deceptive and Unfair." Reply Br. of Appellant at 14. Waldal fails to provide any argument, authority, or explanation about how the call center violated the CPA.

themselves violate the CPA or that Keystone engaged in an unfair or deceptive act or practice by offering to fulfill the warranty's terms. Because summary judgment is appropriate "[w]here there is 'a complete failure of proof concerning an essential element of the nonmoving party's case,'" Fischer-McReynolds v. Quasim, 101 Wn. App. 801, 808, 6 P.3d 30 (2000) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)), Waldal fails to show the trial court erred by entering summary judgment on his CPA claim.

We affirm the trial court's grant of summary judgment to Keystone.[3]



WE CONCUR:



[3] Both Waldal and Keystone request attorney fees on appeal. Both fail to identify a basis in law, contract, or equity for such an award, which RAP 18.1(b) requires. Wilson Court Ltd. P'ship v. Tony Maroni's, Inc., 134 Wn.2d 692, 710 n.4, 952 P.2d 590 (1998) (citing Austin v. U.S. Bank of Wash., 73 Wn. App. 293, 313, 869 P.2d 404 (1994)). As neither party makes "more than a bald request for attorney fees on appeal," neither is entitled to an award of attorney fees under RAP 18.1. Wilson Court Ltd. P'ship, 134 Wn.2d at 710 n.4 (citing Thweatt v. Hommel, 67 Wn. App. 135, 148, 834 P.2d 1058 (1992)).

SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

SKYLER WALDAL, a single person, Plaintiff, v. KEYSTONE RV COMPANY, a foreign corporation; CURTIS TRAILERS, INC., an Oregon corporation; TRUCK TRAILS NORTHWEST, LLC, a Washington company; NUMERICA CREDIT UNION, a Washington corporation; and WESTERN SURETY, a foreign corporation, Defendants.	No. 17-2-11770-31 **ORDER RE DEFENDANT KEYSTONE RV COMPANY'S MOTION FOR SUMMARY JUDGMENT AND MOTION TO STRIKE AND PLAINTIFF'S MOTION FOR CR56(F) CONTINUANCE AND DISCOVERY SANCTIONS**

This matter came for hearing before the Court on Defendant Keystone RV Company's Motion for Summary Judgment and Motion to Strike Certain Portions of the Declarations of Eugene Bolin, Scott Waldal and Mark Olson, and Plaintiff Skyler Waldal's Motion for CR 56(f) Continuance. The Court has reviewed:

A. Defendant's Motion for Partial Summary Judgment;

B. Declaration of Joseph P. Corr in Support of Motion for Partial Summary Judgment;

C. Plaintiff's Response to Motion for Partial Summary Judgment;

D. Declaration of Mark Olson;

E. Declaration of Rebecca Bolin;

F. Declaration of Eugene N. Bolin, Jr.;

G. Declaration of Scott Waldal;

CORR|DOWNS PLLC
100 WEST HARRISON STREET
SUITE N440
SEATTLE, WA 98119
206.962.5040

H. Plaintiff's Supplemental Response to Motion for Partial Summary Judgment;

I. Defendant's Reply in Support of Motion for Partial Summary Judgment and Motion to Strike;

J. Reply Declaration of Joseph P. Corr in Support of Motion for Partial Summary Judgment; and

K. Plaintiff's Supplemental Statement of Authorities.

As well as all attached exhibits and supporting documents, and all other evidence submitted in support of, and opposition to, the Motions, as well as pleadings on file, heard and considered the oral arguments of counsel, and is otherwise fully informed.

I. Keystone's Motions to Strike

1. At the hearing, the Plaintiff withdrew paragraphs 3 - 9 in the declaration of Eugene N. Bolin, Jr., dated November 5, 2018.

2. At the hearing, the Plaintiff withdrew those portions of Scott Waldal's declaration which contain hearsay. Those are paragraph 13; he second sentence of paragraph 14; the portion of paragraph 14 which reads "he simply said 'thanks' and 'goodbye' "; the last sentence of paragraph 19 which reads, "Keystone also says now that they have no record of the 15-20 calls we made;" the first sentence of paragraph 23 that states, "Keystone and Curtis Trailers told us to go to Truck Trails for repairs."

3. Keystone's motion to strike the declaration of Mark Olson is DENIED without prejudice.

II. Plaintiff's Motion for a Continuance

1. The Plaintiff withdrew his motion for a continuance under CR 56(f) at the time of the hearing.

CORR|DOWNS PLLC
100 WEST HARRISON STREET
SUITE N440
SEATTLE, WA 98119
206.962.5040

III. Plaintiff's Motion to Dismiss and Keystone's Alleged Discovery Violations

1. In the Plaintiff's Supplemental Response, the Plaintiff moved for dismissal of the Motion for Summary Judgment, and the imposition of sanctions against Keystone for its failure to produce discovery specifically relevant to Keystone's Motion for Summary Judgment. Plaintiff represented in its pleadings that the Defendant intentionally withheld discovery consisting of nine (9) pages of new information, detailing approximately sixty (60) contacts between Keystone, its dealers, a supplier, Curtis Trailers, and the Plaintiff, all relating to the warranty claim.

2. This motion was not noted before this court as a discovery violation, and was not timely served on the other party in order to allow response. The court notes that although the summary may not have been provided in its summary form previously, the vast majority of its contents were previously provided in discovery, or available to the Plaintiff as they were his own communications. In fact, many of the communications summarized were provided to the Court and reviewed for this hearing.

IT IS HEREBY ORDERED that the motion for discovery sanctions is DENIED without prejudice as it was not timely noted, and is not decided on the merits. The motion to dismiss the Motion for Partial Summary Judgment because of the alleged discovery violations is DENIED.

IV. Defendant Keystone RV's Motion for Summary Judgment

Discussion

In his complaint, Plaintiff alleged 12 causes of action against Defendants Curtis and Keystone RV. The causes of action against Curtis Trailers have been ordered to be submitted to arbitration and were not addressed at this hearing.

Plaintiff claims causes of action for Personal Service of Process Outside Washington,

CORR|DOWNS PLLC
100 WEST HARRISON STREET
SUITE N440
SEATTLE, WA 98119
206.962.5040

Injunctive Relief, Joint and Several Liability, the Holder Rule, Surety Bond and not causes of action, but are legal principles and theories of liability.

In his prayer for Damages, Plaintiff requests relief under the Auto Dealers Protection Act, Oregon's Unfair Trade Practices Act, and Washington's Consumer Protection Act. Plaintiff has provided no factual or legal basis to support his requests for relief under any of those Acts, and has failed to address why Oregon Law should be used in this action.

Plaintiff also requested punitive damages, and damages for the purchase of a Ford F-550 truck. Punitive damages are not available in Washington, and Plaintiff has provided no argument that this case should be decided under Indiana law. The declarations provided by the Plaintiff and his answer to Defendant's Requests for Admission, as well as the content of the James Keough, Jr. deposition, indicate that at all times, the Plaintiff towed the RV using a Ford F-350, which has been used by Plaintiff and his father to tow "all sorts of heavy equipment." There is no evidence to support the claim that Plaintiff purchased a Ford F-550 for the sole purpose of towing this RV.

Plaintiff has provided no factual support for his allegations of Negligent Hiring and Supervision. Plaintiff provides no factual or legal basis for either of his Breach of Implied Warranty claim, claim for Revocation of Acceptance, and claim for Rescission with regards to Keystone RV, as there of no evidence of contractual privity between Plaintiff and Keystone. Plaintiff's claim for Breach of Contract fails to identify the contract alleged to have been breached. Other than the one year warranty issued by Keystone RV, Plaintiff has failed to identify any other contract with Keystone RV, the terms of any such contract, or how they were breached.

Keystone RV provided an express limited warranty, under which Keystone would repair the RV for defects not excluded from coverage. Keystone acknowledges that the RV at issue here contains a defect, and that the defect is covered under the warranty. As a backup remedy, in the event the RV cannot be repaired after Keystone has been given a reasonable opportunity

CORR|DOWNS PLLC
100 WEST HARRISON STREET
SUITE N440
SEATTLE, WA 98119
206.962.5040

to repair, Keystone will replace the vehicle, or pay the diminution in value. Plaintiff has failed to permit Keystone a reasonable opportunity to repair the defect, and the evidence submitted by both parties demonstrates that Plaintiff failed to maintain reasonable and consistent contact with Keystone regarding diagnosing and repairing the RV, including a failure to respond to communications from Keystone between February and July of 2017. Experts for Keystone and Plaintiff have identified potential fixes, but Plaintiff has not allowed Keystone to attempt the repairs.

Order

After full consideration of the evidence submitted by the parties, it appears and the court finds that there is no genuine issue of any material fact and that Defendant Keystone RV is entitled to judgment as a matter of law, IT IS HEREBY ORDERED AS FOLLOWS:

1. Defendant Keystone RV Company's Motion for Summary Judgment is GRANTED;

2. Plaintiff's cause of action against Keystone RV Company for Negligent Hiring and Supervision is hereby dismissed with prejudice; and

3. Plaintiff's cause of action against Keystone RV Company for Breach of Contract is hereby dismissed with prejudice; and

4. Plaintiff's cause of action against Keystone RV Company for Breach of Implied Warranties under the UCC is hereby dismissed with prejudice; and

5. Plaintiff's cause of action against Keystone RV Company for Breach of Express Warranty, based on the facts alleged, is hereby dismissed with prejudice; and

6. Plaintiff's cause of action against Keystone RV Company for Breach of Implied Warranties under Oregon Law is hereby dismissed with prejudice; and

7. Plaintiff's cause of action against Keystone RV Company for Personal Service of Process Outside Washington is hereby dismissed with prejudice; and

8. Plaintiff's cause of action against Keystone RV Company for Rescission is

CORR|DOWNS PLLC
100 WEST HARRISON STREET
SUITE N440
SEATTLE, WA 98119
206.962.5040

hereby dismissed with prejudice; and

9. Plaintiff's cause of action against Keystone RV Company for Injunctive Relief is hereby dismissed with prejudice; and

10. Plaintiff's cause of action against Keystone RV Company for Joint and Several Liability is hereby dismissed with prejudice; and

11. Plaintiff's cause of action against Keystone RV Company for the Holder Rule is hereby dismissed with prejudice; and

12. Plaintiff's cause of action against Keystone RV Company for Surety Bond is hereby dismissed with prejudice; and

13. Plaintiff's cause of action against Keystone RV Company for Revocation of Acceptance is hereby dismissed with prejudice.

IT IS SO ORDERED.

DATED this 7th day of November, 2018.

JUDGE JENNIFER LANGBEHN

Presented by:
CORR|DOWNS PLLC

s/*Joseph P. Corr*
Joseph P. Corr, WSBA No. 36584
jcorr@corrdowns.com
100 W. Harrison St., N440
Seattle, WA 98119
Telephone: (206) 962-5040
Attorneys for Defendants Keystone RV Company and Curtis Trailers, Inc.

CORR|DOWNS PLLC
100 WEST HARRISON STREET
SUITE N440
SEATTLE, WA 98119
206.962.5040

FILED

2019 MAR 29 AM 10: 27

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH

17-2-11770-31
ORMRC 111
Order on Motion for Reconsideration
5246804

SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

SKYLER WALDAL, a single person,

Plaintiff,

v.

KEYSTONE RV COMPANY, a foreign corporation; CURTIS TRAILERS, INC., an Oregon corporation; TRUCK TRAILS NORTHWEST, LLC, a Washington company; NUMERICA CREDIT UNION, a Washington corporation; and WESTERN SURETY, a foreign corporation,

Defendants.

No. 17-2-11770-31

ORDER ON PLAINTIFF'S FIRST AND SECOND MOTIONS FOR RECONSIDERATION

This matter came for hearing before the Court on Plaintiff's First Motion for Reconsideration. The Court has reviewed:

1. Plaintiff's First Motion for Reconsideration;
2. Defendant Keystone RV Company's Opposition to Plaintiff's First Motion for Reconsideration;
3. Declaration of Joseph P. Corr in opposition to Plaintiff's First Motion for Reconsideration;
4. Plaintiff's Reply in Support of Plaintiff's First Motion for Reconsideration;
5. Plaintiff's Post-Hearing Supplemental Brief;
6. Supplemental Declaration of Eugene Bolin, Jr. in support of Plaintiff's First Motion for Reconsideration; and

CORR|DOWNS PLLC
100 WEST HARRISON STREET
SUITE N440
SEATTLE, WA 98119
206.962.5040

7. Keystone RV Company's Response to Plaintiff's Post-Hearing Supplemental Brief.
8. Plaintiff's Second Motion for Reconsideration;
9. Subjoined Declaration of Eugene Bolin, Jr. in support of Plaintiff's Second Motion for Reconsideration;
10. Defendant Keystone RV Company's Opposition to Plaintiff's Second Motion for Reconsideration and Request for Fees and Costs;
11. Declaration of Stephen Holmes in opposition to Plaintiff's Second Motion for Reconsideration; and
12. Plaintiff's Reply in Support of Plaintiff's Second Motion for Reconsideration.

As well as all attached exhibits and supporting documents, and all other evidence submitted in support of, and opposition to, Plaintiff's First Motion for Reconsideration, as well as pleadings on file, heard and considered the oral arguments of counsel, and is otherwise fully informed.

The Court initially granted summary judgment and dismissed all of Plaintiff's claims with prejudice. The Court conditioned the dismissal of the claim for Breach of Express Warranty on the facts as alleged at that time. In its discussion section, the Court addressed the fact that the claims were not yet ripe as Keystone agents had not been afforded a reasonable opportunity to repair the RV. At oral argument for the Plaintiff's first motion for reconsideration, there was extensive discussion that Keystone had offered to repair the suspension, and that Plaintiff's counsel had refused the repair when Keystone would not agree to the additional accomodations requested by Plaintiff's counsel. As it appears that Keystone agrees that the repairs should be completed, but that the RV has not yet been presented to a Keystone authorized dealer for repair, it would not be equitable to dismiss the claim as to the Express Warranty with prejudice. As to the remainder of the Plaintiff's claims, the motion for reconsideration does not provide any clear legal basis for the motion, beyond citing CR59 and its subsections, and the Court cannot find, based on the evidence presented, that any legal basis exists.

CORR|DOWNS PLLC
100 WEST HARRISON STREET
SUITE N440
SEATTLE, WA 98119
206.962.5040

While the Court's decision on the Plaintiff's first motion for reconsideration was pending, Plaintiff filed a second motion for reconsideration, claiming newly discovered evidence, and further raised issues that there was no reasonable inference from the evidence to justify the Court's decision, that the decision was contrary to law, that there was an error in law, and that substantial justice was not done. Plaintiff's briefing only addressed newly discovered evidence. However, Plaintiff fails to show that the evidence could not have been discovered previously through reasonable diligence. In fact, the evidence was provided through discovery in a different case. Further, Plaintiff has failed to demonstrate the relevance of the document to this case, or how it would have impacted the Plaintiff's case or the Court's decision.

Therefore, IT IS HEREBY ORDERED AS FOLLOWS:

1. After full consideration of the evidence submitted by the parties, it appears and the Court finds that there is a limited basis to reconsider the Court's November 26, 2018 Order Granting Keystone RV Company's Motion for Summary Judgment and dismissing Plaintiff's causes of action against Keystone RV Company in their entirety; and
2. Plaintiff's First Motion for Reconsideration as to the claim for Breach of Express Warranty is GRANTED; and
3. Plaintiff's First Motion for Reconsideration as to the remaining claims is DENIED; and
4. Plaintiff's Second Motion for Reconsideration is DENIED.
5. Defense's motion for attorney fees related to the second motion for reconsideration is granted. Defendant is awarded $1500.00 in attorney fees.

IT IS SO ORDERED.

CORR|DOWNS PLLC
100 WEST HARRISON STREET
SUITE N440
SEATTLE, WA 98119
206.962.5040

DATED this 28th day of March, 2019.

HONORABLE JENNIFER R. LANGBEHN

Presented by:

CORR|DOWNS PLLC

s/Joseph P. Corr
Joseph P. Corr, WSBA No. 36584
jcorr@corrdowns.com
100 W. Harrison St., N440
Seattle, WA 98119
Telephone: (206) 962-5040
Attorneys for Defendant Keystone RV Company

FILED

2019 APR -9 PM 2:53

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH

17-2-11770-31
ORGMT 116
Order Granting Motion Petition
5328806

The Honorable Jennifer R. Langbehn

SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

SKYLER WALDAL, a single person,

Plaintiff,

v.

KEYSTONE RV COMPANY, a foreign corporation; CURTIS TRAILERS, INC., an Oregon corporation; TRUCK TRAILS NORTHWEST, LLC, a Washington company; NUMERICA CREDIT UNION, a Washington corporation; and WESTERN SURETY, a foreign corporation,

Defendants.

No. 17-2-11770-31

ORDER GRANTING KEYSTONE RV COMPANY'S MOTION FOR CLARIFICATION

This matter came before the Court on Keystone RV Company's Motion for Clarification of Court's Orders on Plaintiff's First and Second Motions for Reconsideration. The Court has reviewed:

1. Keystone RV Company's Motion for Clarification of Court's Orders on Plaintiff's First and Second Motions for Reconsideration;
2. _____; and
3. _____.

As well as all attached exhibits and supporting documents, and all other evidence submitted in support of, and opposition to, Keystone RV Company's Motion for Clarification of Court's Orders on Plaintiff's First and Second Motions for Reconsideration, as well as pleadings on file, and is otherwise fully informed. The court further finds that a hearing is not necessary in this matter as the Court is free to clarify its own order to conform to the Court's intention.

CORR CRONIN PLLC
1001 WEST HARRISON STREET
SUITE N440
SEATTLE, WA 98119
206.962.5040

IT IS HEREBY ORDERED AS FOLLOWS:

1. Keystone RV Company's Motion for Clarification of Court's Orders on Plaintiff's First and Second Motions for Reconsideration is GRANTED;

2. The discussion section of the Court's Orders on Plaintiff's First and Second Motions for Reconsideration is amended to read as follows beginning at page 2, line 21 (revisions in bold italics):

> As it appears that Keystone agrees that the repairs should be completed, but that the RV has not yet been presented to a Keystone authorized dealer for repair, it would not be equitable to dismiss ***a potential future claim against Keystone RV*** as to the Express Warranty with prejudice. ***Plaintiff's breach of express warranty claim against Keystone RV as asserted in the Complaint remains dismissed. However, nothing in this Order should be read as precluding Plaintiff from pursuing a separate breach of express warranty claim against Keystone RV in the future should that claim become ripe.***

IT IS SO ORDERED.

DATED this 9th day of April, 2019.

HONORABLE JENNIFER R. LANGBEHN

CORR|DOWNS PLLC
100 WEST HARRISON STREET
SUITE N440
SEATTLE, WA 98119
206.962.5040

Presented by:

CORR|DOWNS PLLC

Joseph P. Corr, WSBA No. 36584
jcorr@corrdowns.com
100 W. Harrison St., N440
Seattle, WA 98119
Telephone: (206) 962-5040
Attorneys for Defendant Keystone RV Company

LAW OFFICES OF EUGENE N. BOLIN, JR.

August 31, 2022 - 3:39 PM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	83064-3
Appellate Court Case Title:	Skyler Waldal, Appellant v. Keystone RV Company, et al., Respondents
Superior Court Case Number:	17-2-11770-4

The following documents have been uploaded:

- 830643_Petition_for_Review_20220831153759D1297339_2537.pdf
  This File Contains:
  Petition for Review
  The Original File Name was Petition for Review.pdf

A copy of the uploaded files will be sent to:

- dhutchings@corrdowns.com
- jcorr@corrdowns.com
- jdowns@corrdowns.com

Comments:

Sender Name: Eugene Bolin - Email: eugenebolin@gmail.com
Address:
144 RAILROAD AVE STE 308
EDMONDS, WA, 98020-4100
Phone: 425-582-8165

Note: The Filing Id is 20220831153759D1297339