No. 325687

(Spokane County Superior Court No. 11-2-02470-3)

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

ROCKROCK GROUP, LLC, a Washington limited liability company, and RUSSELLROCK GROUP, LLC a Washington limited liability company

Appellants,

vs.

VALUE LOGIC, LLC, a Washington limited liability company, TERRY SAVAGE and JANE DOE SAVAGE, a married couple, and JENNY BENSON and JOHN DOE BENSON

Respondents.

APPELLANTS' INITIAL BRIEF

M CASEY LAW, PLLC
Marshall Casey, WSBA #42552
1318 W College
Spokane, WA 99201
(509) 252-9700

CASEY LAW OFFICE, P.S.
J. Gregory Casey, WSBA#2130
1318 W College
Spokane, WA 99201
(509) 252-9700
Attorneys for Respondents

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I. Introduction

The main issue in this case is whether or not a real estate appraiser can be held liable for issuing appraisals that fall beneath the standard of care, when those appraisals are used to solicit investors into buying the land appraised at significantly more than the land is worth. In particular here, the Appraisal Defendants issued an appraisal with an opinion of $4,500,000 value on 51 acres that Mr. Jeffreys had under contract for $475,000. This appraisal was discussed with certain investors, who became members of RockRock Group, LLC; RockRock Group, LLC was assigned Mr. Jeffreys contract; and RockRock Group, LLC paid $1,630,000 for seventy-five percent (75%) of the land ($475,000 to finish the contract of Mr. Jeffreys and the rest as a profit to Mr. Jeffreys). Seven days after the closing of this transaction, the Appraisal Defendants issued a $4,250,000 on the adjacent 39 acres, which Mr. Jeffreys had under contract for $300,000, and the same transaction occurred for RussellRock Group, LLC.

The appraisals issued by the Appraisal Defendants contain gross inaccuracies. Just a three examples of these are (1) that Mr. Jeffreys purchased the full 90 acres, both pieces of property, for $1,800,000, when in reality he had a right to buy both properties for $775,000; (2) that the properties, which were 5-20% light industrial land (the rest was rural

traditional land allowing for 1 house per every 10 acres), should be properly compared to sales of pure light industrial or mixed used land; and (3) that a letter of intent by a church for 20 unidentified acres put the value of the land at $2.15, when that was solely Mr. Jeffreys statement of what he thought he could get, and the letter of intent reflected at most $1.55 a square foot with contingencies. The Appellants have retained an expert who speaks to these appraisals failing to meet the standard of care for an appraiser. The Appraisal Defendants (hereafter "Respondents") have produced no experts.

This case came before Judge Eitzen on a summary judgment motion that the Appellants could not meet their burden of proof at trial. The general order is that the Appellants cannot meet the burden of proof at trial. In review of the two hearings on this the Appellants believe this court will agree that the major reason for dismissal was the "justifiable reliance" issue of appraiser negligence and causation for negligence in general. In particular the manager of the entities testified that he did not pay attention to the appraisals when he entered the transactions. As a manager managed LLC Judge Eitzen agreed with the Respondents that no reliance existed. However, members of the entities, including some of the most financial sound members, testified they knew of the appraisals and those appraisals were key to their investment.

Appellants urge this court to deny summary judgment against the Respondents, and to allow this case to go to trial so the jury can decide the issues of whether or not the Respondents should be liable for issuing negligent appraisals that furthered a fraud.[1]

II. Assignment of Error

Appellants assign error to the following items:

1. That there are no genuine issues of material fact regarding Appellants claims of real estate appraiser negligence/ negligent misrepresentation.

2. That there are no genuine issues of material fact regarding Appellants claims of negligence.

3. That there are no genuine issues of material fact regarding Appellants consumer protection act claims.

4. The burden of proof in real estate appraiser negligence is the same as the burden of proof in pure negligent misrepresentation, clear, cogent and convincing evidence.

5. Appellants have addressed the cross claim of the statute of limitations, but do not assign error to this since they agree that the trial

[1] Appellants do not use fraud lightly, and while not in front of the trial court at that time, Mr. Jeffreys has pled guilty to bank fraud related to these appraisals, thus the usage in the introduction.

[2] We apologize to the court for the confusing names involved in this case. The names were chosen by others and have been kept as they are referred to throughout the evidence

court was correct in its finding that the statute of limitations had not run.

III. Statement of Case

This suit involves two parcels of adjacent land that make up 90 acres in the West Plains of Spokane, Washington. These two parcels were appraised by the Respondents and purchased by the Appellants. The land involved is as follows:

Sundevil Land:[2] This is the east 39 acres of the 90 acres involved in this matter. It is along an access road from Highway 2 in the west plains of Spokane County. It is zoned approximately 4.5 acres Light Industrial (LI) and 34.85 acres of Rural Traditional (RT). CP 590

Rothrock Land: This is the west 51 acres of the 90 acres involved. It is adjacent to the Sundevil land and also borders an access road from Highway 2 in the West Plains of Spokane County. It is zoned approximately 15.02 acres Light Industrial (LI) and 36.63 acres of Rural Traditional (RT) land. CP 600.

Transactions that form the basis of the claims

In August of 2006 Mr. Jeffreys entered into negotiations to purchase, through his company Sundevil Development, LLC (hereafter "Sundevil"), 90 acres on the West plains from Rocky Rothrock and groups

[2] We apologize to the court for the confusing names involved in this case. The names were chosen by others and have been kept as they are referred to throughout the evidence so as to preserve continuity. A quick glossary table has been attached to this brief to help with the names. It is not evidence to be relied upon but rather meant to be helpful.

he represented. The 51 west acres were owned by a group of people, including a trust owning a portion of the land. CP 226. The east 39 acres was owned solely by Rocky Rothrock. CP 234.

On September 20, 2006 Sundevil finalized a purchase and sale agreement for the 51 west acres, identified above as the Rothrock Land. This finalization came when the institutional trustee for the Porter Trust, Washington Trust Bank, signed the sale agreement. This was to close on or before December 1, 2006 and was for the purchase price of $475,000. CP 218-227.

On September 25, 2006 Sundevil finalized the purchase and sale agreement for the 39 east acres, identified above as the Sundevil Land. This was to close on or before December 1, 2006 and was to be a cash payment of $300,000. CP 229-234.

On September 28, 2006 Ms. Benson of Value Logic, LLC visited the 90 acres of land with Mr. Jeffreys. CP 237. It was this visit that is referenced in the appraisal and is the basis for the opinion of value in the appraisals being as of September 28, 2006. CP 235-264; 604; 680.

Also on September 28, 2006 Mr. Largent and Mr. Miller, members of the Appellants, visited the land based on their previous discussions with Mr. Jeffreys. Mr. Largent has testified that he overheard Mr. Jeffreys on a telephone call with RiverBank, the bank lender in these transactions,

telling RiverBank that ValueLogic should be used to appraise the land. CP 680-686.

On September 29, 2006 RiverBank faxed an appraisal engagement agreement to ValueLogic (at that time it was called All American Appraisals) for the Rothrock Land (51 acres). Ms. Benson has testified that there was similar fax on the Sundevil Land, but none has ever been produced in discovery. CP 211-213; 604.

During this time Mr. Main, a realtor and friend of Mr. Jeffreys, and Mr. Jeffreys solicited investors to purchase the Rothrock Land. The proposal was that the investors would join a group that would purchase a seventy-five percent (75%) interest in the land for $1,630,000. A prospectus stated that the "[e]stimated current value of the land is $2.00 per square foot." CP 664-669; 682.

On October 2, 2006 Sundevil did a purchase and sale agreement with Mr. Main, where Mr. Main would purchase seventy-five percent (75%) of the Rothrock Land for $1,630,000. This agreement does not discuss Sundevil's purchase price of $475,000. CP 270-273.

Between October 3, 2006 and closing the entity RockRock Group, LLC (originally supposed to be Rothrock Group, LLC) was formed and put together. It was filed with the secretary of state on October 3, 2006 but the documents for membership agreement and other governing

documents were signed at different times by different members during this time. CP276; 300-303. The sole purpose of RockRock Group, LLC was for the investment in land. It was manager managed, with its manager being Bart Johnson. CP 276; 279.

On October 10, 2006 Value Logic submitted an appraisal report to RiverBank with an opinion of value on the Rothrock Land of $4,500,000, or $2.00 per square foot. The appraisal states that it is for "[f]inancing purposes and to facilitate a sale." CP 241. Mr. Savage testified that before issuing this appraisal he called another appraiser and land use planner, Mr. Sweitzer and confirmed that the price of $2.00 a square foot was not unreasonable to him. CP 724.

On October 17, 2006 the attorney for RockRock Group received a letter from the Mr. Rothrock stating an evaluation appraisal had been done by Mr. Sweitzer on the Rothrock Land. Based upon that evaluation the Porter Trust was demanding $13,776 per acre as a reasonable price. CP 624-625.

Before closing Mr. Main called at least two investors and told them the appraised value of the property. Mrs. Hubbell, the manager of Stan & Hubbs, LLC (a member of RockRock Group, LLC) has submitted a declaration that she was told the land had been appraised at $4,500,000. She even wrote this on the prospectus at the time, a copy of which was

submitted with the declaration. CP 664-669. Mr. Largent has testified that he was told that it had appraised as expected, at over $4 million. CP 687.

Closing for the Rothrock Land occurred upon November 9, 2006. In closing Mr. Main's purchase and sale agreement was assigned to RockRock Group, LLC. CP 311; 326-328. RockRock Group took out a loan for over $1,025,000 from RiverBank, and $800,000 from Sundevil to purchase seventy-five percent of the Rothrock land. CP 307-309; 330-332. To secure the loans every member personally guarantied the loan, and the property was put up as collateral. CP 307-309; 331.

Shortly after the closing on the Rothrock Land, November 15, 2006, RussellRock Group, LLC was formed for the purpose of purchasing the Sundevil Land. CP 336; 342. It followed a very similar process as the sale of the Rothrock Land to RockRock Group, and even contained the same manager of Bart Johnson. CP 381-385; 387; 389; 391-393; 395-397. There are a few variations though in how it was put together.

Value Logic issued the appraisal on the Sundevil Land on November 16, 2006 with an effective date of September 28, 2006. CP 252. The opinion is that the land is worth $2.50 per square foot for a value of $4,250,000. CP 253. Ms. Benson stated the reason that the Sundevil Land was valued $0.50 more per square foot was because it was a smaller parcel. CP 719-720. The appraisal states it was issued for "[f]inanicng

purposes and to facilitate a sale." CP 256.

In December of 2006 certain investors had a meeting at Mr. Jeffreys home where they discussed the transaction. Included in this meeting were discussions about the appraisal on the Sundevil Land. CP 635-637; 670-671.

In January of 2007 the parties closed on the Sundevil Land. Much like the previous transaction, RussellRock took out $990,000 in loans from RiverBank and $800,000 in loans from Sundevil in order to purchase seventy-five percent (75%) of the Sundevil Land. CP 391-393; 395-397 The loans were guarantied by the personal guaranties of the members along with the land. *Id.*

Prior to closing Mr. Cummins, who invested in RussellRock Group through his company, asked the attorney for RussellRock Group to send a copy of the appraisal with the closing paperwork. CP 635-637. The appraisal letter, showing it was appraised at $4,250,000 was sent out to the members via e-mail. CP 467-468.

The Plaintiffs held these pieces of land for several years hoping they could sell them, but with no avail. Because the loans were short term the Plaintiffs needed to get their loans with RiverBank or go through financing with another bank. In September of 2009 Value Logic again was retained to appraise the 90 acres. CP 627-632.

In the 2009 appraisals Value Logic determined that the value of the land for both parcels, Sundevil Land as well as Rothrock Land, had fallen to $1.50 a square foot. This gave the Rothrock Land a value of $3,375,000, and the Sundevil Land a value of $2,550,000. *Id.* Ms. Benson stated in her deposition that the sole reason for the drop in value was the downturn in the real estate market. CP 721.

On November 3, 2009 Riverbank had an internal review of the Value Logic 2009 appraisals. CP 634. The internal review found the 2009 appraisals to be insufficient because most of the land was zoned RT and the comparative properties used to evaluate the land were mostly light industrial. *Id.* RiverBank contacted Mr. Jeffreys with the problem to see how these could be resolved. *Id.*

In November of 2009 Mr. Jeffreys contacted Mr. Cummins and offered to sell Mr. Cummins the note he was carrying on the Sundevil Land. Mr. Cummins thought the offer to sell the note was too cheap and began to be suspicious of the transaction. This prompted Mr. Cummins and other investors from California to start a personal suit against Mr. Jeffreys and his entities. CP 635-637.

Three months later RiverBank had the land re-appraised by someone other than Value Logic. That appraisal determined the light industrial portions of the land were worth $1.50 a square foot, or the same

as Value Logic's total, but that the rural traditional portions were worth $6,500 per acre (approximately $0.15 per foot). CP 600; 590. At that time the Rothrock Land was appraised at $1,220,000 and the Sundevil Land at $520,000. CP 597; 590.

This suit was started and filed on June 16, 2011. CP 1-3. The Appraisal Defendants, were dismissed on summary judgment on January 24, 2013. CP 897-899. The case continued against the other Defendants involved in this matter until final judgment was issued on June 13, 2014. CP 902-905.

IV. Argument

Motions for summary judgment are reviewed de novo. The appellate court engages in the same inquiry as the trial court. 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. A motion for summary judgment should only be granted if after reviewing the evidence reasonable persons could reach but one conclusion. *Hubbard v. Spokane County*, 146 Wn.2d 699, 706-707 (2002), citations omitted. In engaging in a summary judgment review a court must consider all facts and any reasonable inference in the light most favorable to the non-moving party. *Id.*

This argument shall be setup to (A) first to show the Plaintiffs have

sufficient facts for their three claims of (1) real estate appraiser negligence/ negligent misrepresentation, (2) consumer protection act, and (3) negligence. The second section (B) shall address the statute of limitations argument raised in cross appeal by the Respondents. The last section (C) will address the burden of proof standard as it relates to real estate appraiser negligence and negligent misrepresentation.

A. Plaintiffs have sufficient facts to meet their burden of proof on their claims

In reviewing the sufficiency of facts a court must consider all facts and any reasonable inference in the light most favorable to the non-moving party. *Id.* Plaintiffs have sufficient evidence of (1) real estate appraiser negligence/ negligent misrepresentation, (2) consumer protection act violations, and (3) negligence.

1. Real estate appraiser negligence/ negligent misrepresentation

In *Schaaf v. Highfield* our supreme court declared that real estate appraisers are liable to "those involved in the transaction that triggered the appraisal report, including but not limited to, the buyer and seller. *Schaaf v. Highfield*, 127 Wn.2d 17, 27 (1995). This liability was pursuant to RESTATEMENT (SECOND) OF TORTS § 552. *Id.* Our Supreme Court has defined *Schaaf* as the case that created real estate appraiser negligence

as a separate tort from negligent misrepresentation. *Eastwood v. Horse Harbor Foundation*, 170 Wn.2d 380, 388 (2010).

RESTATEMENT (SECOND) OF TORTS § 552 contains two sections. Section 1 lays out the elements establishing liability, and section 2 lays out to whom a person can be liable. *Schaaf*, 127 Wn.2d at 23. Three years after *Schaaf* the *ESCA Corp.* court, in a non-real estate appraiser negligence case, approved jury instructions stating six elements of negligent misrepresentation, one of which went to section 2 of § 552, to whom you are liable. *ESCA Corp. v. KPMG Peat Marwick*, 138 Wn.2d 820, 827-828 (1998). The element that goes to RESTATEMENT (SECOND) OF TORTS § 552(2) is that the defendant knew or should have known the information was supplied to guide the plaintiff. *Id.* The *Eastwood* court defined *ESCA Corp.* as negligent misrepresentation in contrast to real estate appraiser negligence as laid out in *Schaaf*. *Eastwood,* 170 Wn.2d at 388. The *Schaaf* court heavily analyzed RESTATEMENT (SECOND) OF TORTS § 552(2) and held that as a matter of law, for real estate appraisers it was defined as those involved in the transaction that triggered the appraisal, and extended no further. *Schaaf*, 127 Wn.2d at 27.

It is the position of the Appellants, based upon *Schaaf*, that negligent real estate appraisal encompasses the RESTATEMENT

(SECOND) OF TORTS § 552(1) for liability, and the liability extends to those involved in the transaction that triggered the appraisal. Because of that the liability here will be analyzed (a) the Respondents supplied false information in the appraisal; (b) the Appellants were involved in the transaction that triggered the appraisal, (c) the Respondents were negligent in obtaining or communicating the false information, (d) the Appellants relied upon the information, (e) the reliance upon the false information was reasonable, (f) the false information proximately caused the damage to the Appellants. This structure is a mixture of the jury instruction approved of in *ESCA Corp.*, with the ruling of *Schaaf* that is specific to negligent real estate appraisal.

a. Respondents supplied false information in the appraisal

An opinion by an expert carries with it the implied assertion that the speaker knows the facts exist to support the opinion and those facts are correct. *Costa v. Neimon*, 123 Wis.2d 410, 415, 366 N.W.2d 896 (Ct.App. 1985), cited in *Schaaf*, 127 Wn.2d at 31. As recognized by the *Liebergesell* court, "[r]eputation for integrity or knowledge of a given subject would be worth nothing if its possessor could not assume that others would believe in him or accept his opinion." *Liebergessell v. Evans*, 93 Wn.2d 881, 891, quoting *Gray v. Reeves*, 69 Wash. 374, 376-77

(1912). It is well established that a negligently obtained or communicated opinion will constitute false information for the purposes of a negligent misrepresentation claim. *Lawyers Title Ins. Corp. v. Baik*, 147 Wn.2d 536, 547 (2002).

The appraisals state the following:

> In preparing this appraisal, the appraisers inspected the subject property and **gathered pertinent information** such as assessed valuation, **zoning**, and other governmental factors; analyzed economic and demographic trends; and **interviewed individuals familiar with values, sales, and trends in the market, including buyers, sellers, and brokers**. The appraisers then gathered information on **comparable land sales and analyzed data as it applies to the Sales Comparison Approach to value**. CP 243; 258 (emphasis added).

There are several false statements in this information. In particular though are two of them, (i) the sales history of the property, and (ii) the comparable land sales. These two led though the main false information, which was that the Rothrock Land was worth $2.00 per square foot or $4,500,000 and the RussellRock Land was worth $2.50 per square foot, or

$4,250,000.

i. The sales history was false information

In the sales history the appraisal states that there is a pending sale for the 90 acres of $1,800,000 between Mr. Jeffreys and the groups represented by Mr. Rothrock. It goes on to state that the 51 acres, Rothrock Land, has been apportioned a value of $775,000 of this, and the 39 acres, Sundevil Land, is apportioned $1,025,000 of this. CP 654-55; 646.

This statement is patently wrong since at best (we ignore the contingencies and other items) Mr. Jeffreys had the full 90 acres under contract for $775,000, not $1,800,000. CP 218-227; 229-234. Along with this Mr. Jeffreys had the Rothrock land under contract for $425,000 not $775,000, and the Sundevil Land under contract for $300,000, not $1,025,000. *Id.*

The sales history goes on to talk about a sale to the Rothrock Group (later changed to RockRock Group) of the Rothrock Land at $2,400,000. While this could be a stretched to that, ignoring the fact the RockRock Group was still in process, the true transaction was RockRock Group was paying $1,630,000 for seventy-five percent (75%) of the land.

The last inaccuracy is that the Rothrock Group had a letter of intent on 20 acres of the Rothrock Land at $2.15 a square foot. In reality this

letter of intent had significant contingencies and was for $1.55 a square foot at most. The $2.15 was at best Mr. Jeffreys belief that he could bargain it up to that. CP 647.

An analysis of sales history is a requirement of USPAP and the standard of care of an appraiser. Mr. Shorett notes that these are misleading. CP 648.

ii. Sales comparisons were false information

There are several things factually wrong with the sales comparisons in this matter. In particular though is that the first three comparisons sales are pending transactions on the Rothrock Land. Basically the sales history, shown inaccurate above, is broken out and used as comparison sales. CP 647; 654-655. Since these three sales are completely inaccurate, not to mention the other problems of analysis that Mr. Shorett points out they are in and of themselves wrong facts.

Along with this the Respondents use other transactions Mr. Jeffreys had previously done as sales comparisons and land that is zoned differently than the Rothrock Land and Sundevil Land. *Id.* In general Mr. Shorret has stated about the sales comparisons "[t]his section is lacking in the foundation for how the property is to be valued and relies on comparable data that is not adequately analyzed and described in the appraisal report." CP 656.

Since the only basis of the over $4 million appraisal on each parcel of land is the sales comparison approach, Mr. Shorett's statement, "[t]he value opinion rendered in this appraisal is not reliable and the conclusion is misleading" is well supported. *Id.* Overall the $4,500,000 opinion of value on the Rothrock Land, and $4,250,000 opinion of value on the Sundevil Land are false information.

b. The Appellants were participants in the transactions which triggered the appraisal

The scope of the transaction that triggers the appraisal is a factual question. *Schaaf*, 127 Wn.2d at 27. By law it includes the buyers and sellers, but can extend to those to all involved in the transaction. *Id.* There is sufficient evidence to find that the Appellants were involved in the transactions that triggered these appraisals.

These appraisals state their intended use is for financing and to facilitate sales of the land. CP 241; 256. The evidence is that these were provided to RiverBank to do the loans, and that the only parties who took out loans using these appraisals, and for these pieces of land were RockRock Group, LLC and RussellRock Group, LLC. CP 307-309; 391-393. There is however even more detail here to provide the evidence that supports the Appellants being part of the transactions that triggered the appraisals.

i. Sundevil's right to purchase the land, and Mr. Main's right to purchase the land, which could be the only other possible transactions triggering the appraisal, were both assigned and finished by RockRock Group, LLC in the first transaction and RussellRock Group, LLC in the second transaction. CP 311; 326-328; 387; 389.

ii. Facts about the appraisals, in particular that they were completed and the value they came in for, were clearly communicated to the members of the Appellants as incentives for the Appellants to believe the value existed to finish the transactions. CP 664-669; 687; 635-637; 670-671; 467-468.

iii. For the Appellant RockRock Group LLC, their transaction is mentioned in the appraisal as a comparative and also in the ownership history, as an anticipated transaction on the Rothrock Land. CP 647; 705.. At the time of the Rothrock Land appraisal RockRock Group was originally to be called Rothrock Group, but was changed. CP 708.

iv. Mr. Jeffreys, the only other individual could have had a separate transaction to trigger these appraisals, testified that he never applied to RiverBank for loans on these properties. CP 715.[3] This leaves only the Appellants' transactions with RiverBank that could have

[3] Counsel feels compelled to discuss what the trial court brought up, that counsel has argued other instances where Mr. Jeffreys has done less than truthful acts. Counsel does not argue the truth or falsity of Mr. Jeffreys testimony here, but rather that it is evidence for a jury to consider in the scope of the transactions.

triggered these appraisals.

v. Lastly the fax from RiverBank to the Respondants says it was for the Project: Rothrock LLC. CP 212. There is no such fax produced on the Sundevil Land for RussellRock, but Ms. Benson testifies there was one and it just got lost. CP 604.

Overall there are sufficient facts for the fact finder to make a ruling that the Appellants were involved in the transactions that triggered these appraisals.

c. The Respondents were negligent in acquiring or communicating the false information

An appraiser's failure to meet the professional standards of their industry is a source of negligence. *Schaaf*, 127 Wn.2d at *fn.* 7. An affidavit containing an expert opinion on an issue of ultimate fact is sufficient to create a genuine issue of fact contesting a summary judgment motion. *Lamon v. McDonnell Douglas Corp.*, 91 Wn.2d 345, 351-352 (1979). See also *Bolser v. Clark*, 110 Wn. App. 895, 899 (2002) for an appraiser found negligent based upon opinions of an expert that the appraiser used the wrong zoning for comparative sales.

Mr. Shorett, an MAI and certified real estate appraiser, reviewed the appraisals gave an expert report on the appraisals. The following is a portion of his findings:

> The appraiser has not employed regularly accepted appraisal methodologies and techniques in arriginve at the value conclusion. The Highest and Best USA Analysis is not supported with proper market evidence. The pending sales on the property and the comparable sales data used in the report is not adequately analyzed and therefore, the appraisal[s] [do] not fulfill the requirements of Standards Rule 1-5(a) and Standards Rule 2-2(b)(viii) of USPAP. This is not a USPAP or FIRREA compliant appraisal and the results of the appraisal[s] are misleading." CP 643; 650.

The Respondents have brought forward no expert to speak to their appraisals meeting the standard of care, but even if they had this would still be sufficient evidence to create an issue of fact for trial.

d. The Appellants relied upon the appraisals

Reliance is a question of fact. *Schaaf,* 127 Wn.2d at 30. The *Schaaf* court recognized two forms of reliance. First was direct reliance when you see the appraisal. *Schaaf*, 127 Wn.2d at 31. The *Schaaf* court in the same analysis of reliance pointed to *Costa v. Neimon*, a Wisconsin case, to show inferred reliance when you are aware that the appraisal amount is necessary for the loan to be approved. *Id.* There is a distinct

difference between reliance upon an appraisal as a warranty of construction, as we see the plaintiff in *Schaaf* did when he complained about the roof, and reliance upon an appraisal for the value of the property as we see the plaintiff in *Costa* did, and as the court noted in *Borish v. Russell*, 155 Wn. App. 892, 906 (2010). The two main cases in Washington for non-reliance, based upon not seeing the appraisal *Schaaf* and *Ramos*, are when the plaintiffs complained of physical defects in the property, in particular the roofs needed replacement. *Schaaf*, 127 Wn.2d at 30; *Ramos,* 141 Wn. App. 11, 17 (2007). In direct contrast being aware of the appraisal has been sufficient reliance for when one looks at the value number as opposed to a warranty on the quality of a place. See *Borish* and *Costa supra.*

In the Rothrock Land purchase by RockRock Group, LLC there is testimony of reliance upon the appraisal amount by both Mr. Largent and Mrs. Hubbell. CP 664-669; 687. The evidence is clear that a prospectus was circulated among the possible investors stating the "[e]stimated current value equals $2.00 per sq. foot." CP 668. Mrs. Hubbell's declaration states that Mr. Main confirmed that the appraisal came in "appraised 4.5 million" as she wrote on her prospectus copy. CP 664-669. Mr. Largent testified that Mr. Main called him about the appraisal coming in just like they thought it was and they were on track to close. CP 687. It

was after these conversations that RockRock Group, LLC agreed to the assignments of the previous contracts for the Rothrock Land, agreed to the loan for $1,025,000 with RiverBank and the loan of $800,000 with Sundevil for the land. This shows very similar reliance to both *Costa* and *Borish*, who relied upon the appraisal value to go forward with the purchases of the property.

In RussellRock Group's purchase of the Sundevil land we see similar testimony of reliance. Both Mr. Watkins and Mr. Cummins have put in declarations that the appraisal, which was issued on November 17, 2006 was discussed at the investor meeting in December of 2006. CP 635-637; 670-671. Mr. Cummins testifies that he was told the value represented to him was confirmed by an appraisal. This was all prior to RussellRock Group, LLC even finishing its membership agreement, accepting the assignment of the duties to buy the land and engaging in loans with RiverBank of around $990,000 and Sundevil of $800,000. Mr. Cummins even requested the attorney for RussellRock Group to send out the appraisal to the group with the closing documentation. This was sent at or near the time that RussellRock Group was agreeing to enter into the entire deal. CP 467-468.

This testimony by the members is evidence of reliance by the Appellants. This is particularly true since the Appellants had no duty or

right to buy the properties until they were assigned the deals at closing, and the members entered into the investments allowing the Appellants to go through with the transactions based upon representations of value in the appraisals. Much like the *Costa* and *Borish* cases, the Appellants have evidence of reliance that is sufficient for a fact finder to grant find this element.

e. Reliance by the Appellants is justified

Justifiable reliance is reliance that is reasonable under the circumstances. *ESCA Corp.*, 135 Wn.2d at 828, *Lawyers Title Ins. Corp.*, 147 Wn.2d at 551. The *ESCA Corp.* case gives the best facts for distinguishing what can be justified reliance as a matter of law. In that case Seafirst issued an extension of credit upon a "draft audit" of the company. Later a final audit was issued and further credit was issued. The trial court ruled the draft audit was unreasonable as a matter of law, but that the final audit could go to trial for reliance. The jury found reliance on the final audit. The Appellate and Supreme Court agreed that it was unreasonable as a matter of law to rely upon a draft audit that stated it was incomplete, but reliance on the final audit could go to trial. *ESCA Corp.*, 135 Wn.2d 832-833. For appraisals, we see the same type of reasoning in *Barnes v. Cornerstone Inv.*, 54 Wn. App. 474, 478-479 (1989) where the appraisal was less than a full and complete MAI

appraisal and the appraisal was issued in a limited scope, it was unreasonable for the plaintiff to rely on an less than full appraisal. In contrast, *Schaaf's* plaintiff could have been reasonable reliance because it was a full appraisal despite the fact it was done for the VA and not the plaintiff. *Schaaf*, 127 Wn.2d at 28.

Here the appraisal was a complete appraisal issued with MAI certifications stating among other things it was done in conformity with the Uniform Standards of Appraisal Practice (USPAP), among other standards and that the statements of fact contained in the report are true and correct. CP 239; 254. These were complete reports for the purpose of financing and facilitating sales, sales the Appellants completed, and the reasonableness of such reliance is justified by the circumstances.

f. The false information proximately caused the damage to the Appellants

Proximate cause contains two prongs, the first is the but for causation and is generally a question of fact for the jury. *Christen v. Lee*, 113 Wn.2d 479, 507-508 (1989). The second prong of legal causation is whether liability should attach as a matter of law. *Id.* It is maintained that the second prong has already been decided in *Schaaf. Supra.*

The harm complained of here is that the Appellants bought land that was worth significantly less than what they were led to believe by the

appraisals, and worth less than what they paid. For RockRock Group, LLC buying the Rothrock land this is evident by the Respondents giving a 2006 appraisal of $4,500,000, a 2009 appraisal of $3,375,000, and then PGP giving an independent appraisal six months later in March 2010 of $1,220,000 on the Rothrock Land.

For RussellRock Group, LLC the harm is equally viewable by the Respondents giving an appraised value in 2006 of $4,250,000 on the Sundevil Land, a September 2009 appraised value of $2,550,000, and PGP giving an independent appraised value in March of 2010 at $520,000.

The Appellants have presented evidence that the appraisals were used to market these properties to their members and to get people to invest. This is clear but for cause for trial.

Overall the Appellants have good facts and evidence for a jury in this matter, and although reasonable minds may differ, taking the evidence in the best light of the non-moving party these facts create substantial evidence for trial. This claim should not have been dismissed for having no genuine issue of material fact.

2. Consumer Protection Act Claims

Claims of professional judgment fall outside the consumer protection act, such as for lawyers and doctors, this has been lightly applied to real estate appraisals in *Ramos v. Arnold*, 141 Wn. App. at 20

but not thoroughly analyzed. The case law is clear that the entrepreneurial aspects of a person's profession do fall within the consumer protection act. *Short v. Dempolis*, 103 Wn.2d 52, 60-61 (1984). Entrepreneurial aspects include billing, fees, and how a professional obtains, retains and dismisses its clients. *Id.*; *Haberman v. WPPSS,* 109 Wn.2d 107, 169 (1987). The five elements of a consumer protection act claim are (a) an unfair or deceptive act, (b) occurring in commerce, (c) the act affected the public interest, (d) the act injured the plaintiffs' business or property, and (e) the act was the proximate cause the harm to the plaintiffs. *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 787-93 (1986). The Appellants have sufficient facts to support these.

a. The Respondents did an unfair or deceptive act

An act is unfair or deceptive under the CPA if it is a per se violation of statute, an act or practice that has the capacity to deceive substantial portions of the public, or an unfair or deceptive act or practice not regulated by statute but in violation of the public interest. *Klem v. Wash. Mut. Bank.*, 176 Wn.2d 771, 787 (2013).

Here there is substantial evidence that how appraisers obtain their clients, in particular banks is in the public interest. RCW 18.140.005 expressed a legislative mandate that "only individuals who meet and maintain" standards of competence and conduct should provide services to

the public. Plus, as shown in the testimony of the Appraisal Institute before Congress, the appraisal is an important part of the public interest in the banking industry. CP 691. Among these standards is the requirement that one follow UPSAP as the applicable standard for all appraisal practice in Washington. WAC 308-125-010(5).

There is sufficient evidence that the Respondents were engaged by Mr. Jeffreys and recommended to RiverBank for the purpose of rendering pre-determined opinions of value. If this is true it is an unfair and deceptive act, in particular related to the entrepreneurial aspects of how they obtain clients. Consider the following evidence:

- Mr. Largent has testified that while he was out at the property he heard Mr. Jeffreys on the phone with RiverBank recommending that they use Value Logic to do the appraisal. CP 680-686.
- Ms. Benson visited the site three days after Sundevil got its rights to buy the property, and one day prior to receiving the engagement letter by RiverBank. CP 211-213.
- The prospectus for the Rothrock Land states that it is expected to appraise at $2.00 per square foot and that is exactly where it comes in. CP 664-669.
- The sales history and first three comparatives are so wrong

compared to the reality of the transactions that it borders fiction. For instance consider the sales comparative 2 that the Respondents give a value of $2.15 per square foot despite it being $1.55 per square foot at best, based solely on Mr. Jeffreys believing he can bargain them up. Consider also sales comparison 3 which states Mr. Jeffreys is buying the full 90 acres for $1,800,000 when he is actually buying it for $775,000.

- Mr. Savage has testified that he changed his opinions in the past based on Mr. Jeffreys' requests. While he states this was based upon new information provided, he also states that it was because Mr. Jeffreys thought the appraisal was too low. CP 727.

There is substantial evidence for a jury to find that the Respondents got their clients, in particular RiverBank and these Appellants, through unfair or deceptive acts.

b. Occurred in trade or commerce

The evidence is simple here, the Respondents were paid $3,000 for the Rothrock Land appraisal and $2,000 for the Sundevil Land appraisal. CP 215; 217. They were issued to RiverBank for the purpose of doing a loan on commercial land.

c. The Respondents acts affected the public interest

An act affects the public interest if it injured other persons, had the capacity to injure other persons, or has the capacity to injure other persons. RCW 19.86.093(3). Injury to other persons can be shown by the likelihood that additional plaintiffs have been or will be injured in exactly the same fashion; this changes a private dispute into one that affects the public interest. *Behnke v. Ahrens*, 169 Wn. App. 360, 372 (2012).

This can be established by a very simple fact evident in this claim, there are here two Plaintiffs, RockRock Group, LLC and RussellRock Group, LLC, whose causes of action could have been brought separately, but the scheme and harm was similar enough that the Appellants brought them together. Both of them could point toward the other as another person injured in in a similar fashion. Along with this, as stated before, Mr. Savage has stated that he changed his opinions of value at Mr. Jeffreys request before. CP 727. This is sufficient evidence to show a public interest.

Another showing of public interest is that the practices of the Respondent impacted others here outside the Appellants. The bank and the investors in the Appellants, were also harmed by the actions of the Respondents. This is the exact harm testified to in front of Congress by the president of the Appraisal Institute that issues the MAI designations.

CP 691.

d, e. That act injured the Appellants' property or business and was the proximate cause of the harm.

This has been addressed above that the Respondents issued an appraisal of $4,250,000 on the Sundevil Land, and $4,500,000 on the Rothrock Land. Both Appellants bought their seventy-five percent (75%) ownership in their portions for $1,630,000 in what they claim to be reliance in some level upon the appraisals. They owned land that several factors show was significantly lower in value than the paid, and than the appraisals described.

Overall the Appellants have sufficient facts for a fact finder to decide the Respondents violated the consumer protection act. This should not have been dismissed upon summary judgment.

3. The Appellants have sufficient facts for negligence

Negligence is the failure to exercise ordinary care. *System Tank Lines v. Dixon*, 47 Wn.2d 147, 151 (1955). It is the doing of some act that a reasonably careful person would not do under the same or similar circumstances or the failure to do some act that a reasonably careful person would have done under the same or similar circumstances. *Id.* An appraiser's failure to meet the professional standards of their industry is a one source negligence. *Schaaf*, 127 Wn.2d at *fn.* 7. The *Ramos* court had

a chance to review both real estate appraiser negligence under *Schaaf* and "pure negligence" and did not find them mutually exclusive, but rather that reliance and causation are similar under the analysis. *Ramos*, 141 Wn. App. at 19.

Here the Appellants have presented expert opinions of the Respondents violating the standard of care in the reports the Respondents issued. The Appellants have presented testimony of members' knowledge and reliance upon the appraisals to enter the transactions. They have also presented evidence of the property being worth significantly less than what they paid for it. This is sufficient for "pure negligence" claims as *Ramos* refers to negligence.

Overall the Appellants have sufficient evidence for a fact finder to decide the Respondents are liable under (1) real estate appraiser negligence/ negligent misrepresentation, (2) the consumer protection act, or (3) negligence. Appellants urge this court to deny summary judgment against the Appellants since taking the facts and inferences thereof in the best light of the Appellants shows genuine issues of fact for trial.

B. Statute of limitations has not run

The statute of limitations on negligent misrepresentation and negligence is three years. RCW 4.16.080(2),(4). For consumer protection act violations the statute of limitations is four years. RCW 19.86.120. All

these claims though apply the discovery rule, that a plaintiff must have discovered, or with the use of reasonable diligence could have discovered all the elements of the claims before the statute of limitations begins to run. *Sabey v. Howard Johnson & Co.*, 101 Wn. App. 575, 593 (2002)(Negligent misrepresentation has the discovery rule); *Gazija v Nicholes Jerns Co.*, 86 Wn.2d 215 (Generally negligence has the discovery rule). Often difficult to discover is the misrepresentation in itself, or the damage one suffered thereby, both of which are required to be discovered before the statute of limitations can begin to run.

Appellants have maintained that they were harmed by purchasing property at a much higher price than it was worth based upon the Respondents' expert opinions of value. The Respondents argue the Appellants should have discovered the misrepresentations or actual value of the land despite the Respondents holding out twice, once in the first appraisals and second in the 2009 appraisals, that the Respondents were experts, being certified real estate appraisers and having the MAI designation. Such an expectation that non-experts discover what the experts themselves did not discover or were negligent about is simply untenable. In the most generous term, the Appellants had no firm reason to doubt the opinions of experts until they had a separate opinion of value on the land in March of 2010 by PGP giving values to the land of one

fourth what the Respondents gave. Despite this the Appellants will concede there may be evidence its member Mr. Cummins had knowledge in November of 2009 as discussed below. Even so that does not create a problem for the statute of limitations as these were filed in June of 2011.

Very compelling to the non-discovery of the misrepresentation or harm is that the Respondents issued new appraisals in September of 2009, based upon a twenty-five percent (25%) market drop, at $1.50 a square foot for both properties (this is greater than a 25% drop on the Sundevil Land, but still significantly above the March 2010 value of $520,000). These drops due to market value would have hidden the misrepresentation and damage since the market had turned down at that time. Those September 2009 appraisals helped hide the problems and misrepresentations of the Respondants.

The evidence shows that the earliest time for the discovery of the claims in this matter was Mr. Jeffreys called Mr. Cummins in November of 2009 and offered to sell Mr. Cummins the second mortgage on the Sundevil Land for "dirt cheap." That triggered a personal suit between some RussellRock investors and Mr. Jeffreys. The record shows that Mr. Jeffreys' knowledge of problems was RiverBank's internal review of the Rothrock Land 2009 appraisal finding it deficient in its approach. This would mean the discovery rule would be triggered in November of 2012,

whereas this suit was filed in June of 2011, so well within the statute of limitations. Dismissal upon the statute of limitations should also be denied.

C. Argument for change or clarification of Real Estate Appraiser Negligence

One of the largest issues with real estate appraiser negligence and negligent misrepresentation is that the standard of proof is currently "clear, cogent, and convincing evidence." Appellants believe this is inappropriate, unfair, unjust and a useless remnant of history which gives appraisers a special privilege in violation or Article I, section 12 of the Washington Constitution. A law limiting the pursuit of common law claims against certain defendants grants those defendants an article I, section 12 immunity. *Schkoeder v. Weighall*, 179 Wn.2d 566, 573 (2014) (Invalidating medical malpractice statute of limitations restrictions for minors).

Real estate appraiser negligence has grown up in Washington under the same law as negligent misrepresentation. *Schaaf*, 127 Wn.2d at 21-23. However, unlike pure negligent misrepresentation, real estate appraiser liability is limited to a select group, only those who are involved in the transaction that triggered the appraisal. *Id.* at 27. As stated before, our Supreme Court in *Eastwood* named the torts of negligent

misrepresentation, under *ESCA Corp.*, and real estate appraiser negligence under *Schaaf* as two separate independent tort duties arising out of our case law. *Eastwood*, 170 Wn.2d at 388. Uniquely though, negligent misrepresentation, as species of fraud, has developed with the standard of evidence being "clear, cogent, and convincing" evidence, versus "preponderance of the evidence." *Ross v. Kirner*, 162 Wn.2d 493, 499 (2007).

The problem with the "clear, cogent, and convincing" evidence standard for negligent real estate appraisal is that it is fundamentally unfair, and more a product of historical accident than reason, direction from a higher court, or even experience. This fundamental unfairness can be seen in (1) real estate appraisal negligence provides liability to a different and more defined group than negligent misrepresentation, (2) due to the professional judgment rule in *Ramos* appraisers are not fully liable under the CPA like attorneys, doctors and CPAs, but have a higher standard of proof on professional negligence and (3) other professions are not afforded this special burden of proof standard.

1. The scope of real estate appraiser negligence is different than pure negligent misrepresentation

Real estate appraiser negligence extends duties only to those who are involved in the transaction that triggered the appraisal. *Schaaf*, 127

Wn.2d at 27. In direct contrast the independent duty of negligent misrepresentation extends to cases where (1) the defendant has knowledge of the specific injured party's reliance; or (2) the plaintiff is a member of a group that the defendant seeks to influence; or (3) the defendant has special reason to know that some member of a limited group will rely on the information. *Haberman*, 109 Wn.2d 107, 163-164. For jury instructions this has moved to the defendant knew or should have known that the information was supplied to guide the plaintiff's business transactions. *Lawyers Title Ins.*, 147 Wn.2d 536, 545.

The case that shows this the best is *Bolser v. Clark*, 110 Wn. App. 895, (2002). In *Bolser* the appraiser issued an appraisal upon property for a marriage dissolution. *Id.* at 898. A partnership used the appraisal to determine its dissolution of one of the members, and this was done with the knowledge of the appraiser. *Id.* at 899-900. While the *Bolser* court found that did not contradict the restrictions on real estate appraisal under *Schaaf*, they looked back to pure negligence misrepresentation and the actual knowledge required under negligent misrepresentation to extend the appraiser's duty. *Id.* at 901-903. *Bolser* clearly shows that real estate appraiser negligence is much narrower in who it extends to, or at least different, than who the duty extends to under pure negligent misrepresentation. It makes even more contrast considering the *Eastwood*

court's listing them as separate torts and independent duties. *Eastwood, Supra.*

Since real estate appraiser negligence is meant to protect a different group than negligent misrepresentation it is unfair and unjust to continue to use it as a species of fraud that supports the instruction of "clear cogent and convincing." The higher burden of proof now impinges upon the tort rights of the common law action right of the group defined in *Schaaf*, those involved in the transaction that triggered the appraisal.

2. Appraisers are afforded the professional judgment protections from the CPA, but also protected by a higher standard of proof in professional claims against them

An appraisal is a professional opinion that is protected by the "learned profession" exemption that protects the legal profession as stated in *Short*, 103 Wn.2d at 60-61 and later in *Haberman. Ramos,* 141 Wn. App. at 20. Much as the claim of legal malpractice is the proper claim against attorneys for their professional opinions, as opposed to consumer protection act claims, so real estate appraiser negligence is the proper claim against an appraiser. However, the appraiser gets the professional protection from the consumer protection act along with the standard of clear cogent and convincing evidence for such opinions, where attorneys get the protection on their professional services with only a preponderance

of the evidence standard. *Ang v. Martin*, 154 Wn.2d 477, 481-482 (2005).

In general people under negligent misrepresentation and the clear cogent and convincing standard can be held liable under the consumer protection act. This can seen in *Klem,* 176 Wn.2d 771. In that case the jury found for the defendant in the higher burdened negligent misrepresentation claims, but against the defendant in the consumer protection act claims. *Id.* at 781, *fn.* 6. One of the acts that was claimed to violate both was the falsely notarizing documents, which could have been prosecuted under both negligent misrepresentation or the CPA. *Id.* at 792-795. However, the jury chose not to find negligent misrepresentation under the clear cogent and convincing standard but instead under the CPA standard. *Id.*

It would be simply unfair to support the *Ramos* finding that an appraiser can be professionally liable under *Schaaf*, thus have limited application of *Schaaf*, but should be tried on the higher standard of "clear cogent and convincing."

3. Other professions do not get the "clear, cogent, and convincing" standard for their negligence

A professional negligence claim against an attorney is based upon the standard of preponderance of the evidence. *Ang v. Martin*, 154 Wn.2d 477, 481-482 (2005). A professional negligence claim against a medical

practitioner is also preponderance of the evidence. RCW 7.70.030.

One area of growing legal duties has been that of engineers or design professionals. Design professionals have long had a duty of care recognized in law and it flows to those harms that result from the risks that made the design professionals conduct tortious. *Michaels v. CH2M Hill, Inc.*, 171 Wn.2d 587, 605-609 (2011). More recently though in D*onatelli v. D.R. Steong Consulting Engineers, Inc.,* 179 Wn.2d 84 (2013) the Supreme Court ruled that this was a general duty of care to economic as well as non-economic harm that could only be limited by a contract between the parties. *Id.* at 91-94. The *Donatelli* court also considered negligent misrepresentation claims noting these must be proved with clear cogent and convincing evidence, but not requiring the same of the engineering duty. *Id.* at fn. 3.

Overall it is unfair and a special privilege that appraisers get the higher standard of care than engineers, medical practitioners, and attorneys. *Schaaf* may have used the negligent misrepresentation restatement to create the standard for appraisers, but it defined the scope of liability different than negligent misrepresentation. The unjustness though is especially shown though in *Ramos* providing the "professional judgment" exception to the consumer protection act, but that professional claims against appraisers must be tried a the higher burden of "clear

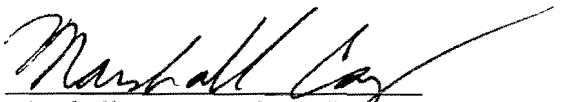
cogent and convincing" due to historical accident.

V. Conclusion

The Appellants have presented sufficient evidence under (1) real estate appraiser negligence/ negligent misrepresentation, (2) negligence, and (3) the consumer protection act for a jury to find the Respondents liable under those theories. It would be unjust and unfair for this court to dismiss valid claims. In particular though, if a parties negligently rendered opinions are used to further a fraud, the party harmed should have a chance to redress that in our courts. That is the issue in this case, will the Appellants have a chance to present their harm to a jury and ask the Respondents be held accountable for their negligence that furthered a fraud?

Appellants ask this court to deny summary judgment for the Respondents and to issue a ruling as a matter of law that the Respondents do not get the protection of a higher burden of proof simply because they happen to be appraisers.

RESPECTFULLY SUBMITTED THIS 5th day of January 2015.



Marshall Casey, WSBA #42552
Attorneys for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, under penalty of perjury, that on the 5th day of January, 2015, I caused to be served a true and correct copy of the foregoing document on the following:

___✓___ HAND DELIVERY _____ US MAIL _____ OVERNIGHT MAIL _____ FACSIMILE _____ E-MAIL/ELECTRONIC DELIVERY	Ross White Witherspoon Kelley Davenport & Toole 422 W Riverside Ave, Suite 1100 Spokane, WA 99201

Larisa Yukhno

Larisa Yukhno

GLOSSARY OF PARTICIPANTS

Alan Cummins: Sole member and operator of Aaple8, LLC, now Bancit, LLC. Invested in RussellRock Group, LLC through his company.

All American Appraisals: Prior name of Value Logic

Bart Johnson: Manager and member of JB&D Land which invested in both RussellRock Group, LLC and RockRock Group, LLC. Was the manager of both entities, and is still the manager of RockRock Group, LLC.

Brian Main: Realtor and friend of Greg Jeffreys. Also participated as a member of both RussellRock Group, LLC and RockRock Group, LLC

David Largent: Member and investor in RockRock Group, LLC and RussellRock Group, LLC.

Gregory Jeffreys: Owner of Sundevil Development, LLC and entered into the purchase and sales contract for the Rothrock Land and Sundevil Land. Those contracts were assigned to RussellRock Group and RockRock Group.

Jenny Benson: Principal and appraiser for Value Logic. Participated in the appraisals of the Rothrock Land and Sundevil Land.

Kelly Hubbell: Manager of Stan & Hubbs, LLC which invested in RockRock Group, LLC as a member.

RiverBank: Bank that did the loans on these transactions.

Rocky Rothrock: Represented a group of owners, himself included, in the sale of the Rothrock Land. Also owned and sold the Sundevil Land.

RockRock Group, LLC: One of the Appellants and the entity that purchased the Rothrock Land. Was originally to be called Rothrock Group, LLC.

RussellRock Group, LLC: One of the Appellants and the entity that purchased the Sundevil Land.

Sundevil Development, LLC: An entity owned and operated by Greg Jeffreys.

Terry Savage: Principal and appraiser for Value Logic. Participated in the appraisals of the Rothrock Land and Sundevil Land.

Value Logic: Company that issued the appraisals for the Rothrock Land and the Sundevil Land.