Supreme Court No. 97188-9

SUPREME COURT
OF THE STATE OF WASHINGTON

No. 77919-2-I

COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON

GRETCHEN MICHELS,

Petitioner,

v.

FARMERS INSURANCE EXCHANGE, an insurance company,

Respondent,

&

BALLARD SIX, a Washington corporation and condominium association,

Defendant.

PETITION FOR REVIEW

Isaac Ruiz, WSBA #35237
Kathryn M. Knudsen, WSBA #41075
PLAINTIFF LITIGATION GROUP PLLC
95 South Jackson Street, Suite 100
Seattle, Washington 98104
Telephone: (206) 203-9100
Facsimile: (206) 785-1702
Attorneys for Petitioner

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I. IDENTITY OF PETITIONER AND INTRODUCTION

The petitioner is Gretchen Michels. Ms. Michels was the plaintiff in the Superior Court and the appellant in the Court of Appeals.

II. COURT OF APPEALS DECISION

Ms. Michels seeks review of the unpublished decision, entitled *Michels v. Farmers Insurance Exchange*, No. 77919-2-I, 2019 WL 1531670 (Wash. Ct. App. Apr. 8, 2019).

III. ISSUE PRESENTED FOR REVIEW

Does the owner of a condo unit that sustained damage in a covered insurance loss have standing to bring claims for breach of contract, insurance bad faith,[1] violation of the Insurance Fair Conduct Act (IFCA),[2] or violation of the Consumer Protection Act (CPA),[3] when those claims arise from an insurance policy purchased by her condo association using unit owners' dues? The Court of Appeals answered in the negative, in conflict with precedent including *Panag v. Farmers Insurance Co.*[4] The issue warrants review under RAP 13.4(b)(1), (2), and (4).

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[1] *Smith v. Safeco Ins. Co.*, 150 Wn.2d 478, 485, 78 P.3d 1274 (2003).

[2] RCW 48.30.010(7), RCW 48.30.015.

[3] RCW 19.86.010 to .920.

[4] 166 Wn.2d 27, 204 P.3d 885 (2009).

IV. STATEMENT OF THE CASE

A. Facts

1. Ms. Michels's condo unit sustained damage in two covered losses.

Ms. Michels owns a unit in the Ballard Six condo building.[5] She is a member of the condo association and pays dues. The association used dues for various purposes, including purchasing insurance for the building from Farmers Insurance Exchange (Farmers). In mid-2015, Ms. Michels's unit experienced damage in two covered insurance losses, which occurred in near succession: a fire/smoke event and a toilet water escape event.[6] The unit was made uninhabitable.[7]

2. Ms. Michels, as unit owner, owned damaged building components covered by the Farmers policy.

The damage affected both common elements belonging to the association and building components belonging to Ms. Michels as unit owner.[8] An industrial hygienist and a restoration contractor submitted declarations stating that most of the damage occurred to building components belonging to Ms. Michels—as that ownership was defined by

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[5] CP 254.

[6] CP 255.

[7] CP 257.

[8] *E.g.*, CP 267–71.

the condo declaration.[9] Farmers presented no evidence to refute this.

Like most property coverage forms, the Farmers policy describes property covered by the policy without defining who is the "insured."[10] The property form provided benefits for damage to "covered property," including the "Building and structure described in the Declarations."[11] According to the "Condominium Association Unit Coverage Endorsement," benefits are provided for damage to certain types of components found within a condo unit,[12] namely:

> (a) Fixtures, improvements and alterations that are a part of the building or structure; and
>
> (b) Permanently installed appliances, such as those used for refrigerating, ventilating, cooking, dishwashing, laundering, security, or housekeeping.
>
> However, the most we will pay for loss or damage to the property in Paragraph (6)(a) and (b) above in any one occurrence is the Limit of Insurance shown in the Declarations for Buildings.[13]

There may be a misconception in part of the Court of Appeals'

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[9] *Id.*; CP 341–43.

[10] Slip op. at 8–9; *see also* CP 77–110 (property coverage form and endorsements). In contrast, liability forms usually devote significant attention to "who" is an "insured." *See* slip op. at 8–9.

[11] CP 85, 66.

[12] CP 114.

[13] *Id.*

opinion that this case is about personal property or that Ms. Michels only owns personal property in the unit.[14] But, to be clear, this case is about damage to *building components* owned by Ms. Michels, the unit owner. According to the condo declaration, certain parts of the building and structure were exclusively owned by the unit owner. The unit owner owns what is defined as the "unit."[15] Interior surfaces of perimeter (boundary) walls, floors, and ceilings are designated as boundaries of the unit.[16] Decorative and finished surface coverings are part of the unit—therefore owned by the unit owner—while all other portions of the walls, floors, or ceilings are a part of the common elements. Interior partitions (the walls inside the unit) are part of the unit and therefore also belong to the unit owner.[17] Spaces and other fixtures and improvements within boundaries of a unit are part of the unit and therefore belong to the unit owner.[18]

3. With respect to building components, the Farmers policy displaced a separate policy that Ms. Michels purchased from PEMCO.

The Farmers policy was one of two policies in play. Ms. Michels

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[14] Slip op. at 11.

[15] CP 834.

[16] CP 835.

[17] *Id.*

[18] *Id.*

separately purchased insurance from PEMCO, but the Farmers policy had primary coverage for damage to building components.[19] Therefore, although PEMCO provided primary coverage for most of Ms. Michels's damaged personal property and for alternative living expenses (ALE),[20] she had no choice but to deal with Farmers on building components.

4. Farmers caused extreme delays and based its estimate on a "guess."

After Ms. Michels became frustrated with adjuster Oscar Ortiz's failure to fully investigate the extent of the damage, her boyfriend contacted Farmers management to complain.[21] This led Mr. Ortiz to stop adjusting the claim with Ms. Michels and begin adjusting with the association.[22] Mr. Ortiz contacted the association for the first time five months after the loss and spoke to its president.[23] Once Mr. Ortiz quit adjusting with Ms. Michels, the association and Farmers allowed the claim to languish as if neither side had an incentive to move the claim forward.

The adjuster testified Farmers' estimate was "a guess at what the

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[19] CP 255.

[20] *E.g.*, CP 183 and 186, Michels Dep. at 57:2–8 and 70:14–18; *see also* slip op. at 2.

[21] CP 516.

[22] CP 517.

[23] CP 517–18.

repairs are going to—the cost."[24] The condo association president was under the impression that Farmers' contractor, McBride Construction, would do the job for the Farmers estimate—$41,180.70.[25] But this was not true. McBride confirmed it never agreed to that number.[26] McBride failed to issue its own estimate and, instead, told Farmers the scope Farmers prepared was incomplete and that the repairs would cost more than the amount set forth in the estimate to complete the repairs.[27]

Farmers continued to rely on Mr. Ortiz's incomplete estimate. It did so even though McBride clearly told Mr. Ortiz: "What I do need to clarify is that I never did write a repair estimate or commit McBride to completing the repairs for the amount of Farmers[']s estimate."[28]

5. Faced with Farmers' failure to complete the investigation, Ms. Michels hired her own experts.

This was Ms. Michels's home, and she was the only person acting with a sense of urgency. As a result of Farmers' failure to fully investigate the damage, Ms. Michels felt she had no choice but to hire her own experts—an industrial hygienist and a contractor—to investigate and

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[24] CP 996, Ortiz Dep. at 86:2–15.

[25] CP 1108, Fraher Dep. 44:18–45:6.

[26] CP 949.

[27] CP 1002, 988–89, 991–92, Ortiz Dep. at 92:7–8, 65:9–66:7, 70:24–71:7.

[28] CP 949.

develop a complete restoration estimate. The industrial hygienist, Susan Evans, inspected the home for asbestos, mold, and other pollutants, and came up with a remediation work plan to be completed before repairs could begin.[29] Charter Construction performed an inspection and wrote a detailed estimate in the amount of $136,662.30—almost $100,000 higher that the Farmers estimate.[30]

6. Farmers ignored the experts' opinions.

Ms. Michels did not rush to the courthouse. She gave Farmers every opportunity to do the right thing. Ms. Michels provided the Charter estimate to Farmers in the hope that Farmers would complete its investigation or at least resume its investigation.[31]

The adjuster, Mr. Ortiz, conceded the Charter estimate was an important piece of information.[32] Nonetheless, he admitted Farmers did not investigate the estimate[33] and did not send the Charter estimate to any expert or to McBride for evaluation.[34] In the year after Farmers received the Charter estimate, Farmers did not issue a new estimate or supplemental

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[29] CP 266–340.

[30] CP 341–365.

[31] CP 997–98, Ortiz Dep. 87:17–88:23.

[32] CP 1005–06, Ortiz Dep. 99:23–100:22.

[33] CP 999, Ortiz Dep. 89:10–21.

[34] CP 999, Ortiz Dep. 89:1–9.

estimate,[35] did not receive any estimate or bid from McBride,[36] and did not increase the scope of Mr. Ortiz's earlier scope.[37]

B. Procedural Background

That was the general situation when Ms. Michels filed suit. She commenced litigation against Farmers and the condo association. She alleged that Farmers breached the insurance contract, engaged in insurance bad faith and negligent claims handling, and violated the CPA and IFCA.[38] Ms. Michels also requested declaratory judgment.[39] On December 14, 2017, the trial court granted Farmers' motion for summary judgment in which Farmers argued Ms. Michels lacked standing.[40] On April 8, 2019, the Court of Appeals affirmed in an unpublished decision.[41]

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

A. Introduction

This case was dismissed without an adequate remedy for the unit owner, Ms. Michels. This was not because the trial court found Farmers to

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[35] CP 1000–01, Ortiz Dep. 90:23–91:1.

[36] CP 1000, Ortiz Dep. 90:15–18.

[37] CP 1001, Ortiz Dep. at 91:2–5.

[38] CP 3–20, Complaint.

[39] *Id.* at 19.

[40] CP 1203.

[41] *Michels v. Farmers Ins. Exch.*, No. 77919-2-I, 2019 WL 1531670 (Wash. Ct. App. Apr. 8, 2019) (attached as Appendix A).

have acted in good faith. The case was dismissed because the Superior Court and Court of Appeals held a unit owner cannot bring suit based on an insurance policy if the policy was purchased by a condo association. Meanwhile, the policy in question covered damage to property owned by Ms. Michels and was paid for, partially, with her dues. And, it must be remembered, Ms. Michels purchased separate insurance from PEMCO, which would have covered damage to the building components had the Farmers policy never existed. Under the decisions below, a unit owner—the party with the greatest stake when damage occurs in her condo unit—is left with few options. There is an accountability gap that diminishes incentives for insurance companies to treat people fairly.

Condo unit owners face an especially difficult situation when experiencing property damage in their units. When damage is limited to a single unit, a condo association may have little incentive to take an active role in the claims-adjustment process and may be deterred from bringing a lengthy and potentially costly lawsuit to enforce the rights under the insurance policy and Washington law since the only person impacted by the loss is the unit owner. Unit owners can be caught in the middle, between an insurer that wants to shortchange the claim and a passive condo association that is not paying attention.

Although it is true a condo unit owner could theoretically bring an

action attempting to force the condo association to bring a lawsuit against the insurer, this is an inadequate solution: First, there is no guarantee of the kind of fee shifting available to the insured in a case directly against the insurer brought under *Olympic Steamship*,[42] for violation of the CPA,[43] and for violation of IFCA.[44] Second, requiring a legal action to compel a second suit against an insurance company is a "solution" that only compounds delay upon delay and may even require a "trial within a trial" to show there is a strong insurance bad-faith and IFCA claim the association should pursue. Third, requiring suit against the condo association creates animosity between stakeholders in the insurance claim—a rift that can be exploited by the insurance company to leverage a smaller settlement.

Washington law provides the solution to this dilemma. Under this Court's precedent—discussed further below—a person may bring a claim in the absence of a direct contractual relationship or an insurer–insured relationship. The Superior Court's and Court of Appeals' decisions run afoul of that precedent, as well as precedent of the Court of Appeals.

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[42] *Olympic S.S. Co. v. Centennial Ins. Co.,* 117 Wn.2d 37, 51–53, 811 P.2d 673 (1991).

[43] RCW 19.86.090.

[44] RCW 48.30.015.

Because this scenario is likely to recur, and because the Court of Appeals decision runs counter to precedent, the Court should grant review.

B. Standard

RAP 13.4(b) provides that a petition for review will be accepted by the Supreme Court only:

> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
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> (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
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> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
>
> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.[45]

This Petition involves Subsections (1), (2), and (4).

C. The decision below conflicts with *Panag* and involves an issue of public concern.

Under this Court's holdings, standing under the CPA does not require either an insured–insurer or a direct contractual relationship. In *Panag v. Farmers Ins. Co.*,[46] an insurance companies with auto subrogation claims against allegedly at-fault drivers hired a collection agency. The collection agency sent collection notices to the at-fault drivers

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[45] RAP 13.4(b).

[46] 166 Wn.2d 27, 204 P.3d 885 (2009).

(not the insureds), implying that they owed unpaid debts when the insurers had only unliquidated tort claims against them.[47] The drivers brought CPA claims against both the insurers and the collection agency.[48] There was no contractual relationship. There was no insurer–insured relationship. Nonetheless, this Court held that the drivers had standing.

Both the insurance and collections industries were highly regulated for a "primary purpose" of "creat[ing] public confidence in the honesty and reliability of those who engage in the business of insurance and the business of debt collection."[49] "We hold that a private CPA action may be brought by one who is not in a consumer or other business relationship with the actor against whom the suit is brought."[50] The only requirements for bringing a CPA claim are proof of the five *Hangman Ridge* elements.[51] "When established, the five *Hangman Ridge* elements of a CPA citizen suit assure that the plaintiff is a proper party to bring suit."[52]

The Court of Appeals here looked too narrowly at Ms. Michels's CPA claim, suggesting that her claim was only "based on Farmers'

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[47] *Id.* at 35–36.

[48] *Id.* at 35, 36.

[49] *Id.* at 43.

[50] *Id.* at 43–44.

[51] *See id.* at 44

[52] *Id.*

alleged breach of insurance claims handling regulations."[53] Although it is true that her claim is based *in part* on these violations, which would establish a *per se* CPA violation,[54] her CPA claim is proper regardless of any regulatory violation or breach of the duty of good faith because there is an issue of fact as to whether Farmers engaged in an unfair or deceptive act or practice as a general matter.[55]

Under *Hagman Ridge* and *Panag*, the elements of a CPA claim are: (l) an unfair or deceptive act or practice; (2) occurring in trade or commerce; (3) public interest impact; (4) injury to plaintiff in his or her business or property; (5) causation."[56] Ms. Michels established each element. (1) A claimant may base a CPA claim on an "unfair" act, which is defined to include a practice that "causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by

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[53] Slip op. at 21, 2019 WL 1531670, at *9.

[54] *Industrial Indemnity Co. v. Kallevig,* 114 Wn.2d 907, 925, 792 P.2d 520 (1990).

[55] As the Court of Appeals stated, *Panag* in a footnote observes that only an insured can bring a CPA claim for an insurer's breach of its statutory duty of good faith. 166 Wn.2d at 43 n.6. Ms. Michels believes she is an insured. Nonetheless, the facts here—where the insurer admittedly covers damage to the plaintiff's property—rise to the level of "unfairness" for purposes of a CPA claim even without applying the test for "bad faith."

[56] *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 780, 719 P.2d 531 (1986).

consumers themselves and is not outweighed by countervailing benefits."[57] Farmers' failure to fully and fairly investigate the damage to Ms. Michels's home, its inordinate delays, and ignoring the opinions of Ms. Michels's experts at the very least create a question of fact whether Farmers engaged in unfair conduct. (2), (3) Farmers' insurance business occurs in trade or commerce and has a clear public-interest impact.[58] For this reason, Ms. Michels believes this case involves a matter of significant public interest for purposes of RAP 13.4(b). (4) Finally, Ms. Michels's displacement from her property—and Farmers' failure to pay the benefits for damage to her property—are clear damage to Ms. Michels's business or property caused by Farmers' unfair conduct.

The Court of Appeals' decision conflicts with *Panag* and *Hangman Ridge* and, for this reason, this Court should grant review under RAP 13.4(b)(1) and (4).

D. The decision conflicts with *Merriman*.

Ms. Michels has a crucial thing in common with the plaintiffs in

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[57] *Klem v. Washington Mut. Bank*, 176 Wn.2d 771, 787, 295 P.3d 1179 (2013) (quotation omitted).

[58] RCW 48.01.030.

Merriman v. American Guarantee & Liability Insurance Co.[59] She, like the plaintiffs in *Merriman,* was not a named insured in the policy, but the policy was purchased to provide benefits for damage to her property. Yet the two decisions reach divergent results. The plaintiffs in *Merriman* were found to be insureds and first-party claimants, while Ms. Michels was not.

The *Merriman* plaintiffs owned personal property stored in a storage warehouse.[60] The warehouse owner purchased insurance from American Guarantee that covered customer property.[61] After a fire burned the warehouse, nobody told the customers they were covered.[62] When, in a negligence case against the storage facility, the customers found out about the existence of the American Guarantee benefits, they brought suit against the insurer. In determining whether customers could proceed with claims based on the policy when they were not named insureds, the Court of Appeals looked to who owned the property covered by the property coverage form.[63] Also relevant was the fact that the policy provided that proceeds for property losses were only for the benefit of the owner of that

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[59] 198 Wn. App. 594, 396 P.3d 351 (2017).

[60] *Id.* at 600.

[61] *Id.* at 602.

[62] *Id.*

[63] *Id.* at 606 ("[T]he building and personal property coverage form, speaks of 'Covered Property' rather than addressing who is an 'Insured.'")

property.[64] The Court of Appeals held that the policy covered "all owners of covered property *as insureds* …" which made "the Merrimans and other storage customers *first party claimants*."[65] The property owners were entitled to bring claims for, among other things, insurance bad faith and violation of the CPA..[66]

Like the policy in *Merriman* that was issued to the warehouse owner but covered the property another—a storage customer—the policy here was issued to the condo association but covers the property of another—Ms. Michels as the unit owner. The Court of Appeals should have held that Ms. Michels had standing to bring a case as an insured and first-party claimant because she owns most of the damaged property. As discussed above, the record showed much of the damage in this case occurred to building components belonging to Ms. Michels—as that ownership was defined by the condo declaration.[67]

The Court of Appeals' decision conflicts with *Merriman* and, for this reason, this Court should grant review under RAP 13.4(b)(2).

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[64] *Id.* at 606–07.

[65] *Id.* at 610 (emphases added).

[66] *Id.* at 600–01

[67] *See supra* Part IV.A.1–2.

E. The decision conflicts with *Postlewait*.

The test of whether a third-party beneficiary may bring a contract action is stated in *Postlewait Construction, Inc. v. Great American Insurance Co.*[68]:

> [B]oth contracting parties must intend that a third party beneficiary contract be created. Furthermore, the test of intent is an objective one; the key is not whether the contracting parties had an altruistic motive or desire to benefit the third party, but rather, "whether performance under the contract would necessarily and directly benefit" that party. The contracting parties' intent is determined by construing the terms of the contract as a whole, in light of the circumstances under which it is made. Where, as here, there are no disputed material facts, the contract will be construed by the court as a matter of law.[69]

Therefore, the key issue is whether performance under the contract would necessarily and directly benefit that party based on the contract as a whole in light of the circumstances.

The Farmers policy provides coverage for the risk of loss not only to common-element property owned by the association, but also to parts of the building owned exclusively by the unit owners.[70] By providing

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[68] *Postlewait Construction, Inc. v. Great Am. Ins. Co*., 106 Wn.2d 96, 99–100, 720 P.2d 805 (1986).

[69] *Id.* at 99–100.

[70] *See* CP 85–86, 74.

coverage for property owned by unit owners, the policy language provides direct benefits to unit owners for the damage to their property.

The Court of Appeals stated that "there is no provision that Farmers will pay unit owners directly for the loss of their property,"[71] which conflicts with the policy terms: The policy gives the insurance company the right to adjust losses with and directly pay the "owner." It provides:

> Our payment for loss of or damage to personal property of others will *only* be for the account of the owners of the property. *We may adjust losses with the owners of lost or damaged property* if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not *pay the owners* more than their financial interest in the Covered Property.[72]

"Covered Property" is a defined term in the policy and, as discussed above, includes parts of the building owned exclusively by Ms. Michels.[73]

The Court of Appeals properly recognized that the condo association must hold insurance proceeds for the unit owners "as their interests appear" under RCW 64.34.352(4), but erroneously applied the rule, finding that "Ballard Six did not insure the personal property of individual unit owners, only the common interests" and that Ballard Six is

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[71] *Id.* at *5.

[72] CP 104 (emphases added).

[73] *See supra* Part IV.A.2.

not "holding insurance proceeds in trust for her related to her personal property losses."[74] Again, it bears repeating that this case is about damage to *building components* owned by Ms. Michels and benefits owed to repair *her property*. When it comes to paying benefits based on damage to covered property owned by the unit owners, the policy provides that the unit owner will be paid based on his or her financial interest in the destroyed property: "We will not pay the owners more than their financial interest in the Covered Property."[75] This language reflects the unambiguous intent to provide policy benefits to the unit owners in the event of property loss.

Finally, there is common sense.

It was Ms. Michels whose unit was damaged, no one else's. The payment of benefits by Farmers would have restored her home, no one else's. Ms. Michels would have been the direct beneficiary—arguably the only person who benefitted—from Farmers' payment of benefits. Restoration of damaged units was, without question, one of the intentions of this insurance policy. Condo unit owners like Ms. Michels therefore easily meet the test for intended third-party beneficiaries. The Court of

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[74] Slip op. at 17, 2019 WL 1531670, at *8.

[75] CP 104.

Appeals opinion holds otherwise and departs from *Postlewait*.

This Court should grant review under RAP 13.4(b)(1).

VI. CONCLUSION

Ms. Michels requests that this Court grant the petition for review of the Court of Appeals' decision.

RESPECTFULLY SUBMITTED this 8th day of May, 2019.

PLAINTIFF LITIGATION GROUP PLLC

By /Isaac Ruiz/

Isaac Ruiz, WSBA #35237
Kathryn M. Knudsen, WSBA #41075
Attorneys for Plaintiff

APPENDIX A

COURT OF APPEALS UNPUBLISHED OPINION

FILED
4/8/2019
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

GRETCHEN MICHELS,

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FARMERS INSURANCE EXCHANGE, an insurance company,

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Defendant.

No. 77919-2-I

DIVISION ONE

UNPUBLISHED OPINION

FILED: April 8, 2019

APPELWICK, C.J. — Michels owns a unit at the Ballard Six condominium complex, and is a member of the Ballard Six Condominium Association. Michels sued Farmers and Ballard Six for damages from a fire in her unit. The trial court dismissed all claims against Farmers on summary judgment. Michels argues that the trial court erred in concluding she is neither an insured nor a third party beneficiary under the contract. She also argues that she is entitled to bring a CPA[1] claim against Farmers regardless of whether or not she is an insured or a third party beneficiary. We affirm.

[1] Consumer Protection Act, chapter 19.86 RCW.

FACTS

Ballard Six is a condominium owners association in Seattle, organized under the Washington Condominium Act (WCA), chapter 64.34 RCW. Each unit owner at the Ballard Six condominium complex is a Ballard Six member.[2] Gretchen Michels owns a unit at the complex. On May 11, 2015, she suffered a fire and smoke loss in her unit after placing a microwave on an electric stove burner that was turned on. A couple of weeks later, she also suffered a water loss in her unit after a toilet overflowed.

Michels filed a timely claim with her personal insurer, PEMCO Mutual Insurance Company (PEMCO).[3] She also filed a claim with Farmers Insurance Exchange (Farmers), the property insurer for the Ballard Six. The Farmers policy listed Ballard Six, not Michels, as a named insured. At her deposition, Michels testified that she reported the loss to Farmers on behalf of herself, and was not representing Ballard Six.

A Farmers adjuster, Oscar Ortiz, began working on Michels's claimed loss.[4] Ortiz inspected the smoke loss on May 13, and created an estimate of the scope

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[2] We refer to the Ballard Six condominium association as "Ballard Six," and specify when we instead refer to the Ballard Six condominium complex.

[3] PEMCO eventually paid Michels approximately $28,000.00 for additional living expenses, and approximately $30,000.00 for the removal, cleaning, and replacement of her personal property.

[4] It is unclear from the record when Michels notified Farmers of the water loss, but she testified that she had called Ortiz about the water loss. It is also unclear from the record if Ortiz inspected the unit for water damage based on a separate water loss claim. There does not appear to be an entry in the claim summary report for a separate water loss claim, and the parties do not provide a citation for a separate claim.

and cost of repairs so that Farmers could issue a payment to Ballard Six. The damage he noted included the following:

> In the kitchen the range is fire/smoke damage, the laminate countertop was burned. The [dishwasher] and Refridgerator [sic] are heavily smoke damaged. The cab[inet]s appear to be fine, but will need heavy clean[ing] and paint to seal. . . . Base is not caulked and Servpro [of Woodinvile] stated that Base should be replaced due to the heavy smoke as the [medium-density fibreboard] material would be damaged by smoke. Blinds would need replacement. Exhaust fan above range would need replacement as well as all light fixtures. . . . [A]ll other areas of this . . . unit [are] heavily smoke damaged. . . . Servpro said would [sic] need to scrape and retexture [the acoustic ceiling] due to amount of soot damaged [sic]. . . . Tub in hall bathroom should be able to be cleaned. Toilet in hall bath will need replacement due to heavy soot damage, but in master bath, toilet can be cleaned. Doors will need replacement as [they are] hollow core and appear would [sic] be smoke damaged Servpro stated. Wall heaters/[baseboard heaters] in unit will need replacement due to heavy smoke damage. Vanities . . . are ok and can be cleaned.

That day, Ortiz gave Michels an initial $19,567.00 check made out to Ballard Six. In September 2015, he reinspected the unit, and gave Michels another check made out to Ballard Six for $9,503.23.

At his deposition, Ortiz testified that, during the initial inspection, he asked Michels whether she was authorized to move forward with the claim. He stated that Michels told him she was authorized, and that she was the treasurer of the Ballard Six.[5] But, after contacting Bill Fraher, Ballard Six's president, Ortiz learned that Michels was no longer the treasurer and that Fraher was the authorized representative for purposes of the claim. In October 2015, Ortiz began working with Fraher to move forward with the claim.

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[5] Michels disputes that she ever told Ortiz that she was the authorized representative of Ballard Six.

Fraher understood that Ballard Six could choose the repair contractor, and was provided with a list of three contractors Ortiz had worked with before. Two of those contractors were McBride Construction (McBride) and Charter Construction (Charter). Fraher called all three contractors, but heard back from only McBride. At a November 4, 2015 meeting of the Ballard Six Board of Directors, Fraher asked that any members who wanted to suggest a contractor give him that contractor's name by an agreed deadline. As of the deadline, no members, including Michels, had suggested a contractor. At the next meeting, the Ballard Six Board of Directors voted to hire McBride as the repair contractor for Michels's unit.

John Niederegger, an estimator for McBride, visited the Ballard Six condominium complex a few times in 2015, but never wrote a repair estimate. Shortly after, he recommended that Ballard Six and Farmers hire a mitigation company to complete mitigation and demolition of the unit, so that McBride could revisit the unit and provide an accurate repair estimate. At his deposition, Ortiz testified that McBride never issued an estimate because it was going to work off of his estimate. And, at Fraher's deposition, he testified that he understood that McBride agreed to do the repairs for $41,180.70, the amount of Ortiz's estimate.

Michels never saw an estimate from McBride. Concerned about hiring a contractor without an estimate, she tried to get PEMCO to cover her unit. PEMCO refused, because the policies said that Farmers was the primary insurer. Around that time, Fraher was denied entry to Michels's unit.

Michels eventually obtained an estimate from Charter.[6] The estimate was three times more than the amount Farmers offered to pay to repair her home. It included repairs to walls, wall heaters, windows, doors, cabinets, the ceiling, the flooring, and the water heater. In September 2016, Michels's attorney forwarded the Charter estimate to Farmers, which Farmers sent to Fraher. Ortiz also asked Fraher for an update on the status of repairs. Ortiz never received a response from Ballard Six about the Charter estimate.

Michels filed suit against Farmers in November 2016.[7] On March 24, 2017, she filed a second amended complaint for money damages against Farmers and Ballard Six. Her claims against Farmers included breach of contract, insurance bad faith, violation of the Consumer Protection Act (CPA), chapter 19.86 RCW, negligent claims handling, and violation of the Insurance Fair Conduct Act (IFCA), chapter 48.30 RCW. She also sought declaratory judgments against Farmers regarding its coverage.

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[6] Michels also obtained a work plan for her unit from Susan Evans, an industrial hygienist. Evans concluded, on a more probable than not basis, that smoke affected all surfaces within the unit, there were metals in the dust on many surfaces, mold growth was present on numerous surfaces, and the sheet flooring in the laundry contained asbestos. Evans's work plan required the removal and destruction of several "contaminated materials" in the unit, including the gypsum wallboard, vinyl window frames, kitchen cabinets and countertops, certain appliances, water-damaged laminate flooring, interior doors, and electric wall heaters. In her brief, Michels does not argue that she provided Evans's work plan to Farmers.

[7] Michels filed her first complaint on November 14, 2016, and an amended complaint on December 8, 2016.

Specifically, Michels alleged that Farmers failed to conduct a site visit for more than 100 days after the water loss, failed to conduct a reasonable investigation of the loss, and failed to provide her with a full scope of the repairs in the year after the loss. She also alleged that Farmers deprived her of her right to select a contractor to perform the repairs.

On November 13, 2017, Farmers filed a motion for summary judgment, arguing that Michels's claims should be dismissed because she is not an insured, nor a party to the insurance contract. As a result, it argued that she has no standing to assert any of her claims. The trial court granted Farmers's motion. It concluded that Michels is not a named insured and presented no fact indicating that she is an intended third party beneficiary to the contract. Michels appeals.[8]

DISCUSSION

Michels makes three arguments. First, she argues that she is an insured and first party claimant under the Farmers policy. Second, she argues that she is a third party beneficiary to the Farmers policy. Third, she argues that even if she is not an insured or a third party beneficiary, standing to bring a CPA claim does not require an insurer-insured or contractual relationship.

[8] In its brief, Farmers notes that Michels settled her claims with the Ballard Six in advance of trial, but does not provide a citation to any settlement information in the record. In her complaint, Michels alleged that Ballard Six violated its declaration and bylaws, and had an obligation to participate in the adjustment of the insurance claim and ensure that Michels's residence was fully restored in prompt fashion. She sought damages, declaratory relief, and an injunction requiring Ballard Six to sue Farmers and authorizing her to pursue an action against Farmers. There does not appear to be any information regarding a settlement between Michels and Ballard Six in the record. And, Michels does not address the settlement in her briefing. As a result, we do not know whether Michels in fact settled her claims, or what the details of that settlement were.

I. Standard of Review

This court reviews summary judgment orders de novo, considering the evidence and all reasonable inferences from the evidence in the light most favorable to the nonmoving party. Keck v. Collins, 184 Wn.2d 358, 370, 357 P.3d 1080 (2015). Summary judgment is appropriate only when no genuine issue exists as to any material fact and the moving party is entitled to judgment as a matter of law. Id. If a plaintiff, "'fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial,'" summary judgment is proper. Young v. Key Pharms., Inc., 112 Wn.2d 216, 225, 770 P.2d 182 (1989) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)), overruled on other grounds by 130 Wn.2d 160, 922 P.3d 69 (1996).

II. Insurance

Interpretation of an insurance contract is a question of law that this court reviews de novo. Quadrant Corp. v. Am. States Ins. Co., 154 Wn.2d 165, 171, 110 P.3d 733 (2005). Courts "construe insurance policies as contracts." Id. In doing so, courts construe the policy as a whole, giving it a fair, reasonable, and sensible construction, as would be given by the average person purchasing insurance. Weyerhauser Co. v. Commercial Union Ins. Co., 142 Wn.2d 654, 665-66, 15 P.3d 115 (2000). If the policy language is clear and unambiguous, a court must enforce it as written. Quadrant, 154 Wn.2d at 171. Courts may not modify a policy, or create ambiguity where none exists. Id.

A. Farmers Policy

The WCA requires that condominium associations maintain, to the extent reasonably available, property insurance on the condominium and liability insurance. RCW 64.34.352(1)(a)-(b). The property insurance "may, but need not, include equipment, improvements, and betterments in a unit installed by the declarant or the unit owners, insuring against all risks of direct physical loss commonly insured against." RCW 64.34.352(1)(a).

Insurance policies under RCW 64.34.352(1) must provide that "[e]ach unit owner is an insured person under the policy with respect to liability arising out of the owner's interest in the common elements or membership in the association." RCW 64.34.352(3)(a). But, condominium associations are not required to maintain insurance for a unit owner's own benefit. Instead, a unit owner is allowed to obtain insurance for their own benefit. RCW 64.34.352(5).

The Farmers policy at issue here lists Ballard Six as the only named insured. In the policy's "Condominium Liability Coverage Form," a section titled "Who Is An Insured" lists the following with regard to unit owners:

> 4. The developer in the developer's capacity as a unit-owner, but only with respect to the developer's liability arising out of:
>
> a. The ownership, maintenance or repair of that portion of the premises which is not owned solely by the developer; or
> b. The developer's membership in the Association.
>
> However, the insurance afforded with respect to the developer does not apply to liability for acts or omissions as a developer.
>
> 5. Each other unit-owner of the described condominium, but only with respect to that person's liability arising out of the ownership, maintenance or repair of that portion of the premises which is not

> owned solely by the unit-owner or out of that person's membership in the Association.

The policy's "Condominium Property Coverage Form" does not include a section describing who is insured. Under that form, covered property includes the "[b]uilding and structure described in the Declarations." An endorsement later modified the policy, adding the following to the policy's covered property:

> (6) Any of the following types of property within a residential unit:
>
> (a) Fixtures, improvements and alterations that are a part of the building or structure; and
> (b) Permanently installed appliances, such as those used for refrigerating, ventilating, cooking, dishwashing, laundering security or housekeeping.

The property coverage form mentions unit owners only with respect to their personal property being excluded. The policy states, "Buildings does not include personal property owned by, used by or in the care, custody or control of a unit-owner except for personal property listed in Paragraph A.1.a.(4) above." (Boldface omitted.) In that paragraph, personal property includes property owned by Ballard Six "that is used to maintain or service the building or structure."

B. Insured

Michels argues that she is an insured under the Farmers policy because she is the "only real party in interest as to property she exclusively owns." (Boldface omitted.) She relies on Merriman v. American Guarantee and Liability Insurance Co., 198 Wn. App. 594, 396 P.3d 351, review denied, 189 Wn.2d 1038, 413 P.3d 565 (2017), Community Association Underwriters of America, Inc. v. Kalles, 164 Wn. App. 30, 259 P.3d 1154 (2011), and Robbins v. Milwaukee

Mechanics Insurance Co., 102 Wash. 539, 173 P. 634 (1918). She also argues that Farmers considered her an insured.

In Merriman, a fire destroyed a storage warehouse owned by Bernd, including the personal property of its customers. 198 Wn. App. at 601. After the customers sued Bernd, its insurer, and the insurance adjuster, the trial court granted the insurance adjuster's motion for summary judgment dismissal of the customers' claims. Id. at 603-04. The Merrimans appealed, and this court considered first whether the Merrimans' claim under the property provisions of the policy was a first party claim by an insured. Id. at 604.

This court noted that the section in the policy describing covered property included "'[p]ersonal property of others in [Bernd's] care, custody and control." Id. at 607. The section also stated, "our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.'" Id. The court determined that this language clearly and unambiguously included as covered property the Merrimans' personal property. Id. And, it found that the statement "our payment for loss of or damage to personal property of others will only be for the account of the owner of the property" unambiguously contemplated that the insurer would pay the loss directly to the owner of that property. Id. Thus, it concluded that the policy was "most reasonably read to include all owners of covered property as insureds, thereby making the Merrimans and other storage customers first party claimants." Id. at 610.

Merriman does not control. Here, the section in the policy describing covered property refers to unit owners, but only to exclude their personal property from coverage. The one exception to the exclusion of personal property coverage is personal property owned by Ballard Six that is "used to maintain or service the building or its structure or its premises." Michels made a separate claim with her personal insurer, PEMCO, for her personal property losses. Unlike Merriman, there is no provision that Farmers will pay unit owners directly for the loss of their property. There is a provision that Farmers's payment "for loss of or damage to personal property of others will only be for the account of the owners of the property." But, again, the policy excludes coverage of unit owners' personal property.

Michels's claims against Farmers are based on the Charter estimate, which includes repair estimates for structural damage to her unit, including damage to walls, wall heaters, windows, doors, cabinets, the ceiling, the flooring, and the water heater. The Farmers policy covers some property within a residential unit, including "[f]ixtures, improvements and alterations that are a part of the building or structure" and certain "permanently installed appliances." But, Ballard Six is the named insured for those covered items.

Next, in Kalles, a condominium board had a fire insurance policy that listed the named insured as "'Harbour Commons, A Condominium.'" 164 Wn. App. at 33. The condominium declaration requiring the board to maintain fire insurance stated that the board was "'named as insured as trustee for the benefit of owners

and mortgagees as their interest may appear.'" Id. at 32. After a fire damaged a unit leased by the Kalleses from the Elkinses, the fire insurer sued the Kalleses, as subrogee of the Harbour Commons, for negligently causing the fire. Id. at 32-33. The Kalleses successfully moved for summary judgment, arguing that the insurer could not sue them because they were a coinsured under the policy. Id. at 33.

This court determined that "the law presumes a tenant to be the landlord's coinsured absent an express agreement to the contrary." Id. at 36. The insurer argued in part that this rule did not apply because the landlords, the Elkinses, were not insured under the policy, only the board was. Id. at 37. This court did not agree. See id. Although Harbour Commons was the named insured, it pointed out that the condominium declaration required the board to obtain fire insurance "'as trustee for the benefit of the owners.'" Id. Even though the insurer did not bargain directly with the Elkinses to insure them, it bargained with "their trustee, the Board, to insure the Harbour Commons." Id. This court found that "[t]here can be no question that the insurance policy served to benefit the Elkinses." Id. Accordingly, because the Kalleses were in privity of contract with the Elkinses and shared a property interest in the unit, they had reason to expect that the policy would cover them as well. Id.

Kalles is distinguishable for two reasons. First, the main issue involved whether the tenants under a lease could avoid an insurer's subrogation claim, based on the argument that they were a coinsured under the policy. See id. at 33.

Here, there is no landlord-tenant relationship nor subrogation claim. Second, the condominium declaration for the Harbour Commons required that the board obtain fire insurance "'as trustee for the benefit of owners.'" Id. at 32. Michels does not point to similar language in the Ballard Six's condominium declaration. Rather, its declaration provides that "[a]n insurance policy issued to the Association does not prevent a Unit Owner from obtaining insurance for the Owner's own benefit." And, it requires the policy to provide that unit owners are insured "with respect to liability arising out of the Owner's interest in the Common Elements or membership in the Association." It does not require the policy to provide that unit owners are also insured with respect to property coverage.

Last, in Robbins, Robbins sold two pool tables to Kempf. 102 Wash. at 540. Under a conditional sale agreement, she reserved title in the pool tables until Kempf completed a certain number of installment payments, totaling $300.00. Id. After making only a few small payments, Kempf made a bill of sale of the property, including the pool tables, in his place of business to his father. Id. Kempf, as his father's agent, then obtained a fire insurance policy that covered the property in the bill of sale. Id. Shortly after, all of the insured property was destroyed in a fire. Id. at 540-41. Robbins sought to enjoin the insurance company from paying money for the pool tables to Kempf, and asked that she be paid her interest in the pool tables. Id. at 541. The trial court entered a judgment in favor of Robbins. Id. at 541-42.

The State Supreme Court affirmed, noting that legal title to the pool tables at all times remained in Robbins. Id. at 542, 545. It also noted that the trial court found that Kempf, in procuring the insurance, disclosed that he had not paid for the pool tables. Id. at 543. Despite the insurance company's argument that there was no contractual relationship between it and Robbins, the court determined that the company "received its premium, the property was destroyed, and it ought not, in good conscience, to avoid paying the loss on a mere technicality." Id. at 544.

The facts here differ from those in Robbins. Ballard Six did not obtain an insurance policy on personal property it was in the process of purchasing from Michels. Rather, it obtained property coverage on a condominium complex where Michels owns a unit. The policy covers some property within the units, including "[f]ixtures, improvements and alterations that are a part of the building or structure" and "[p]ermanently installed appliances." But, the condominium declaration provides that "[a]ny loss covered by the property insurance . . . must be adjusted with the Association." The insurance proceeds for that loss "are payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a Mortgage." The parties do not point to any language in the declaration indicating that a unit owner is an "insurance trustee." And, the Farmers policy expressly excludes coverage for personal property of the unit owner.

Michels also argues that Farmers considered her to be an insured. She points out that Farmers adjusted the claim exclusively with her for five months after the loss. But, Ortiz testified that Michels told him she was authorized to move

forward with the claim. After Fraher told him that he was the authorized representative, Ortiz worked with Fraher to adjust the claim. And, Michels does not provide authority to support that, despite the policy language, Farmers working with her on the claim means that she was an insured.

Ballard Six is the only named insured in the Farmers policy. The policy includes both property and liability coverage. The liability coverage form lists unit owners as insureds, but only with respect to their liability arising out of the ownership, maintenance, or repair of "the premises which is not owned solely by the unit-owner or out of that person's membership in the Association." The property coverage form does not similarly provide that unit owners are insured. It excludes unit owners' personal property and covers some property within a unit. That property includes "fixtures, improvements and alterations that are a part of the building or structure" and certain "permanently installed appliances." But, there is no provision that Farmers will pay unit owners directly for those losses.

These facts are not disputed, and Michels does not argue that any language in the policy is ambiguous. Therefore, under the policy's plain language, Michels is not an insured as to property coverage. The trial court did not err in concluding the same.

C. Third Party Beneficiary

Michels argues next that she is a third party beneficiary to the Farmers policy, because the policy "provides direct coverage for the risk of loss not only to common element property owned by the Association, but also to property owned

exclusively by the unit owners." She cites several statutes in the WCA. She also argues that "when a policy covers property owned by one person but is in the name of another, the property owner is a third party beneficiary." (Boldface omitted.) She relies on an Oklahoma case, Hensley v. State Farm Fire and Casualty Co., 2017 OK 57, 398 P.3d 11.

To create a third party beneficiary contract, the parties must intend that the promisor assume a direct obligation to the intended beneficiary at the time they enter into the contract. Postlewait Constr., Inc. v. Great Am. Ins. Cos., 106 Wn.2d 96, 99, 720 P.2d 805 (1986). "[T]he test of intent is an objective one." Id. Rather than looking at whether the parties "had an altruistic motive or desire to benefit the third party," the key is whether performance under the contract would necessarily and directly benefit that party. Id. "The contracting parties' intent is determined by construing the terms of the contract as a whole, in light of the circumstances under which it is made." Id. at 99-100.

Michels first points to a provision in the "Loss Payment" section of the policy, which states,

> Our payment for loss of or damage to personal property of others will only be for the account of the owners of the property. We may adjust losses with owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners [sic] property. We will not pay the owners more than their financial interest in the Covered Property.

This section refers to payment for loss of or damage to "personal property of others." As established above, the policy's property coverage does not include the personal property of unit owners, except for personal property owned by

Ballard Six. The policy distinguishes between unit owners' personal property, which is not covered, and certain property within a residential unit that is covered. That property includes fixtures, improvements, and alterations that are a part of the building or structure, and certain permanently installed appliances. For those items, Ballard Six is the named insured. There is no similar provision stating that Farmers will pay unit owners directly for the loss of that property.

Michels quotes several statutes within the WCA. First, under RCW 64.34.354, a condominium association must "notify each insurance company that has issued an insurance policy to the association for the benefit of the owners under RCW 64.34.352 of the name and address of the new owner and request that the new owner be made a named insured under such policy." But, there is no requirement within RCW 64.34.352 that an insurance policy be issued for the benefit of the owners with respect to property coverage. In fact, RCW 64.34.352(5) provides that "[a]n insurance policy issued to the association does not prevent a unit owner from obtaining insurance for the owner's own benefit."

Next, RCW 64.34.352(4) provides that a condominium association "shall hold any insurance proceeds in trust for unit owners and lienholders as their interests may appear." But, Ballard Six did not insure the personal property of individual unit owners, only the common property interests. Michels does not establish that Ballard Six is holding insurance proceeds in trust for her related to her personal property losses. On these facts, this section of the statute does

nothing to demonstrate she was an intended third party beneficiary of the Ballard Six insurance contract.[9]

Last, Michels relies on Hensley for the proposition that "[w]hen a policy covers property owned by one person but in the name of another, the property owner is a third party beneficiary." (Boldface omitted.) But, this is not what the Hensley court held. See 398 P.3d at 25.

In Hensley, Douglas bought a mobile home using a contract for deed from the Hensleys, who had an insurance policy on the home. Id. at 14. The Hensleys continued making premium payments on the policy, which continued to be renewed. Id. Under the contract for deed, Douglas made monthly payments to the Hensleys that were required to include the insurance premium amounts. Id. Douglas was not expressly named in the policy. Id. After reporting a theft and vandalism of the home, Douglas and the Hensleys sued the insurer. Id. at 15. The insurer filed a summary judgment motion, arguing that Douglas was a stranger to the insurance contract and unable to bring his claim. Id. at 15-16. The trial court granted the insurer's motion. Id. at 16.

On appeal, Douglas argued that that he was a third party beneficiary to the contract. Id. at 22. He relied on the insurer treating him and his wife as insureds, his equitable interest in the property, and the insurance covering the risk of harm to the entire property, not just the Hensleys' insurable interest. Id. at 22-23. The

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[9] Michels also quotes language from RCW 64.32.220. But, the provisions of chapter 64.32 RCW do not apply to condominiums created after July 1, 1990. RCW 64.34.010(2). Ballard Six was formed in 2008. Thus, RCW 64.32.220 does not apply here.

Supreme Court of Oklahoma held that Douglas's equitable title to the property was "insufficient by itself to confer upon him the status of insured." Id. at 25. But, it found that there was a dispute of material fact as to whether the insurer construed the policy to include Douglas as an insured or beneficiary. Id. Douglas presented facts showing that he was considered an insured and that the policy covered the entire value of the property, not just the Hensleys' interest. Id. On the other hand, the insurer presented facts indicating that it distinguished between Hensley as the insured and Douglas as a tenant. Id. The court reversed and remanded the case. Id.

Michels may benefit from Farmers's performance under the policy. But, she does not point to language within the policy that suggests Farmers and Ballard Six intended that Farmers assume a direct obligation to her. Rather, Ballard Six is the only named insured. The policy's liability coverage form provides that unit owners are insured as to their liability "arising out of the ownership, maintenance or repair of that portion of the premises which is not owned solely by the unit-owner or out of that person's membership in the Association." The policy's property coverage form does not include a similar provision. While it covers certain property within residential units that is a part of the building or structure, it does not provide that Farmers will pay unit owners directly for those losses.

These facts are not disputed. Accordingly, the trial court did not err in concluding that Michels is not a third party beneficiary to the Farmers policy.

D. CPA Claim

Michels argues last that, even if she is not an "insured, first-party claimant, or third-party beneficiary, CPA standing does not required an insured/insurer or contractual relationship." She relies on Panag v. Farmers Insurance Company of Washington, 166 Wn.2d 27, 204 P.3d 885 (2009), and University of Washington v. Government Employees Insurance Company, 200 Wn. App. 455, 404 P.3d 559 (2017).

In Panag, the State Supreme Court considered whether the CPA applies to a collection agency's "allegedly deceptive efforts to collect on an insurance company's subrogation claim against an uninsured motorist." 166 Wn.2d at 34. The collection agency and its client insurance companies argued that the CPA "applies only to disputes arising from a consumer or business transaction, not an alleged tort." Id. The court disagreed, and found that, under RCW 19.86.090 "[t]he CPA allows '[a]ny person who is injured in his or her business or property by a violation' of the act to bring a CPA claim." Id. at 39 (second alteration in original) (quoting RCW 19.86.090). It determined that nothing in that language "requires that the plaintiff must be a consumer or in a business relationship." Id.

But, in a footnote, the court distinguished Panag from a CPA claim based on an insurer's violation of its statutory duty of good faith. Id. at 43 n.6. While it noted that contractual privity is not usually required to bring a CPA claim, it stated that only an insured may bring a CPA claim for an insurer's breach of its statutory duty. Id.

Similarly, in University of Washington, the insurer argued that the trial court erred in allowing the University to bring a CPA claim against it, because the University was not one of its insureds. 200 Wn. App. at 469. The University's claim was based on the insurer's repudiation of a private agreement to split liability between the two. Id. at 464. This court noted that "a '[CPA] claim against an insurance company for breach of its duty to exercise good faith under RCW 48.01.030 is limited to the insured.'" Id. at 470 (alteration in original) (quoting Green v. Holm, 28 Wn. App. 135, 137, 622 P.2d 869 (1981)). But, the court concluded that the insurer's argument did not apply to a private CPA claim, which the University had brought. Id. The trial court had not allowed the University to bring a "per se CPA action for breach of insurance claims handling regulations," and the University "did not proceed on a bad faith theory under the CPA." Id. at 471. Thus, the court found that the University was a proper party to bring the claim. Id.

Unlike Panag and University of Washington, Michels's CPA claim was based on Farmers's alleged breach of insurance claims handling regulations. In her complaint, she alleged that Farmers engaged in "unfair or deceptive acts or practices." She based her CPA claim on Farmers's "violation of the provisions of the Unfair Claims Settlement Practices Regulation," located at WAC 284-30-300 through 284-30-450. The regulation derives its statutory authority from RCW 48.30.010, which prohibits insurers from engaging in unfair trade practices and authorizes the insurance commissioner to define methods of competition and acts

and practices in the insurance business that are unfair or deceptive. WAC 284-30-300.

Accordingly, because Michels is neither an insured nor a third party beneficiary to the Farmers policy, the trial court did not err in dismissing her CPA claim.

We affirm.

WE CONCUR:

CERTIFICATE OF SERVICE

The undersigned declares that on this 10h day of May, 2018, I caused the following documents to be served to the following via email and U.S. Mail:

Francis J. Maloney
Maloney Lauersdorf Reiner, PC
1111 E. Burnside St. #300
Portland, Oregon 97214
fjm@mlrlegalteam.com

Attorneys for Farmers Insurance Exchange

And filed in the Court of Appeals Division One,

600 University Street
Seattle, WA 98101

DATED May 8, 2019, at Seattle, Washington.

Isaac Ruiz

PLAINTIFF LITIGATION GROUP PLLC

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