No. 101363-9

SUPREME COURT
OF THE STATE OF WASHINGTON

COURT OF APPEALS, DIVISION I,
STATE OF WASHINGTON No. 83454-1-I

4501 38TH WEST SEATTLE, LLC, a Washington Limited Liability Company; RUN YONG USA, LLC, an Oregon Limited Liability Company; 5229 UNIVERSITY, LLC, a Washington Limited Liability Company, and; Z REAL ESTATE, INC., a Washington corporation,

Petitioners,

vs.

CRAIG JONATHAN HANSEN, Individually and on Behalf of the Marital Community of CRAIG JONATHAN HANSEN and JANE DOE HANSEN, and; HANSEN LAW GROUP, P.S., A Washington Professional Services Corporation,

Respondents.

PETITION FOR REVIEW

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I. Identity of Petitioners

Petitioners 4501 38th West Seattle, LLC, 5229 University, LLC, and Run Yong USA, LLC ["the Entities"] challenge the recordation of RCW 26.16.100 Notices of Claim of Marital Lien against the real estate of each entity based on an attorney's mistaken *belief* that the opposing party in the underlying dissolution proceeding *might* have a financial interest in the non-party's real estate. Petitioner Z Real Estate, Inc. challenges the ex parte, pre-judgment seizure of Z Real Estate's bank account by that same attorney to secure the unpaid fees owed him by his client in the underlying dissolution proceeding, without notice and an opportunity for a hearing, based on the attorney's mistaken *belief* that the adverse party *might* own the account.

II. Citation to Court of Appeals Decision

Petitioners seek review of the Court of Appeals' decision affirming dismissal of Petitioners' legal malpractice complaint in case no. 83454-1, which appears at 2022 WL

4018164. See Appendix p. 9.

III. Issues Presented for Review

1. Considering that litigants may *not* constitutionally cloud the title to real estate owned by another without pre-seizure notice and an opportunity for a hearing, did the lower courts err when they approved the Respondents' recordation of marital lien notices against the real estate of a Petitioners without providing Petitioners pre-attachment notice and an opportunity for a hearing?

2. Considering that litigants may *not* constitutionally garnish the bank account of a non-party without pre-seizure notice and opportunity for a hearing, did the lower courts err when they approved the Respondents' seizure of Petitioner Z Real Estate's bank account without providing it notice and an opportunity for a hearing prior to seizure?

3. Should an attorney who resorts to litigation

procedures which the attorney knew or reasonably should have known were unconstitutional, be immune from liability for abuse of process?

4. Did the Court of Appeals err when it held that collateral estoppel bars Petitioners' claims, despite the legal distinction between Petitioners' claims against Respondent Hansen as differentiated from his client *Li*?

5. Considering that the deceptive use of traditional debt collection methods to induce someone to remand payment of an alleged debt is precisely the kind of unfair and deceptive activity the Consumer Protection Act was intended to reach, did the Respondent's resort to unconstitutional procedures to secure his unpaid fees violate the CPA?

III. Statement of the Case

A. Facts Established at Summary Judgment

Defendant/Respondent Craig Jonathan Hansen represented Jialin Li in the King County Superior Court dissolution action entitled *Marriage of Zheng and Li,* case no. 18-3-03267-2 (the "Dissolution Case"). CP 021 ¶3.0, 037 ¶3.5. Mr. Hansen is an experienced family law attorney who had practiced for more than 25 years at the time of the events in 2019. CP 155-157. None of the Plaintiffs in the Underlying Matter of *5229 University, LLC v. Li* (Appellants in this case) were parties to the Dissolution Case.

On December 31, 2018, Hansen recorded a "Notice of Claim of Marital Lien" on Ms. Li's behalf against real estate owned by Plaintiff/Appellant 4501 38th West Seattle, LLC. CP 022 ¶3.5, 037 ¶3.5, 065. On January 2, 2019, Hansen similarly recorded a "Notice of Claim of Marital Lien" against real estate owned by Plaintiff/Appellant 5229 University, LLC. CP 022 ¶3.5, 037 ¶3.5, 068. On February 15, 2019, Hansen filed a Notice of Marital Claim against the real estate of Plaintiff/ Appellant Run Yong USA, LLC. CP 022 ¶3.5, 037 ¶3.5, 074.

On February 14, 2019, the Court Commissioner in the Dissolution Case entered a "Temporary Family Law Order" which ordered that Haolin Zheng pay $25,000 in "Lawyer's fees" by January 30, 2019 and awarded "Other Amounts" totaling $41,579. CP 077-084. The Temporary Family Law Order also restrained Mr. Zheng "from transferring any funds from. . .all accounts in the name of. . .Z Real Estate, Inc.'" CP 079. The Entities repeatedly asked that Hansen remove the Notices, but he declined. CP 022 ¶3.8, 037 ¶3.8.

On March 1, 2019, Hansen filed an *ex parte* Application for a Writ of Garnishment directed to US Bank, based on the February 14, 2019 Temporary Family Law Order. CP 088. The application makes no mention of Plaintiff/Appellant Z Real Estate, Inc. *Id.* Hansen nevertheless referenced the account of Z Real Estate, Inc. in his supporting Declaration. CP 117. Hansen's March 3, 2019 Declaration of Mailing shows that he only provided service of the application, by mail, to Mr. Zheng and not to Z Real Estate. CP 118. Hansen offered no evidence

to establish that he had given any notice of the garnishment to Z Real Estate, Inc. CP 088-121. US Bank withheld $66,995 from the account of Z Real Estate in response to the writ of garnishment. CP 096. On April 4, 2019, Hansen sought entry of a judgment against US Bank, *ex parte*, to require it to deliver the $66,995 withheld from Z Real Estate by US Bank. CP 097-112. The Court granted Hansen's motion that same day. CP 113-115.

Hansen's discovery responses established that Ms. Li paid him $8,000 in fees, but that his fees (as established by the February 14, 2019 Temporary Family Law Order) significantly exceeded that amount and Ms. Li "did not have the money to pay Mr. Hansen as the underlying dissolution matter progressed." CP 133 (Ans. to 'Rog. no. 3) and 185 ¶3. Hansen's garnishment thus sought (and obtained) recovery of his attorney fees from the account of Z Real Estate, Inc.

In response to Hansen's tactics, the Entities and Z Real

Estate filed a Complaint against Ms. Li in *5229 University, LLC v. Li,* King County Superior Court case no. 19-2-0-05825-1 SEA on February 28, 2019. CP 656 The Complaint alleged causes of action against Ms. Li for frivolous lien, slander of title, and declaratory judgment. *Id.*

On July 5, 2019, the trial court in the Underlying Matter denied the motion to remove marital liens filed by the Entities, but ordered that any future liens, restraints and garnishments must first be served on the Plaintiffs. CP 672-673. On January 17, 2020, The trial court in the Underlying Matter similarly denied the Entities' motion for summary judgment related to the notices of marital liens. CP 703-704. The trial court in the Underlying Matter thus allowed the Notices of Marital Lien to remain as clouds on the Entities' real estate through trial of the Underlying Matter.

After extensive pre-trial proceedings and a lengthy trial, the trial court ultimately invalidated the Notices of Marital Lien and found the garnishment wrongful--but did not award

damages or attorney fees in favor of the Plaintiffs against Ms. Li. CP 153-154.

The Entities and Z Real Estate appealed and, on October 4, 2021, Division I affirmed the trial court in *5229 University LLC v. Li,* 2021 WL 4523716 (Div. I), holding that the trial court had not abused its discretion when it: (1) declined to award attorney fees against Li, regardless of whether the marital liens and garnishment were invalid [*1-2]: (2) declined to award attorney fees against Li under RCW 4.28.328 regardless of whether the marital liens were invalid [*2]; (3) refused to award attorney fees and costs despite the fact that the marital liens were invalid [*3], and; (4) refused to award attorney fees under RCW 6.27.320 relative to the garnishment [*3-4].

B. Proceedings in the Trial Court

On March 25, 2021, prior to the Division I decision in *5229 University v. Li*), the Entities and Z Real Estate filed the Complaint alleging causes of action for abuse of process and deprivation of property without Due Process against

Respondent Hansen and his law firm. CP 001. Shortly thereafter, the Entities and Z Real Estate amended their original Complaint to add a cause of action for violation of the Washington Consumer Protection Act. CP 019. Hansen and his law firm answered the Complaint. CP 035.

On June 17, 2021, the Entities and Z Real Estate moved for partial summary judgment on liability. CP 045. The trial court granted Plaintiffs' motion for partial summary judgment in its entirety and thereafter denied Hansen's motion for reconsideration.[1] CP 829. Hansen timely filed an interlocutory appeal.[2] However, following issuance of the Division I decision in *5229 University v. Li,* the trial court issued an order to show cause, *sua sponte,* questioning whether it should change its summary judgment ruling. After additional briefing and oral argument, the trial court vacated its prior summary judgment [CP 849] and invited Hansen to file his own summary

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[1] Petitioners ask that, after review, this Court direct the trial court to reinstate its initial summary judgment order establishing liability.

[2] Division I case no. 83230-1.

judgment motion. RP 37:23-38:15. Hansen accepted the trial court invitation [CP 832], which the trial court granted and dismissed Petitioners' complaint. CP 863. Petitioners timely appealed. CP 866.

C. Proceedings in the Court of Appeals

The Court of Appeals, Division I, affirmed dismissal of the Petitioners' Complaint, holding that collateral estoppel barred Petitioners' claims "based on the recording of the liens and the garnishment" and that Hansen's conduct was not "an unfair or deceptive act or practice" violative of the Consumer Protection Act. Appx. 17.

IV. ARGUMENT WHY THIS COURT SHOULD GRANT REVIEW

A. Standard of Review: *De Novo*

"On appeal of summary judgment, the standard of review is de novo, and the appellate court performs the same inquiry as the trial court." *Martin v. Gonzaga Univ.,* 191 Wn.2d 712, 722, 425 P.3d 837 (2018), *quoting Lybbert v. Grant Cnty.*, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000).

B. Allowing Attorneys to Employ Unconstitutional Litigation Tactics Conflicts with this Court's Decisions in *Ross v. Scannell* and *In re Discipline of VanDerbeek,* the United States Supreme Court Decision in *Wyatt v. Cole*, the 9th Circuit Decision Holding Washington's Pre-Judgment Attachment Statute Unconstitutional in *Tri-State Development, Ltd. v. Johnston,* and Washington Appellate Decisions in *Mason v. Mason, Fite v. Lee*, and *Van Blaricom v. Kronenberg*

The Court should grant review pursuant to RAP 13.4(b)(1), (2) and (4) because the Division I decision approves the use of unlawful means to achieve a "reasonable" end, in conflict with prior decisions of this Court and published decisions of the Washington Courts of Appeal, as well as decision of the United States Supreme Court and the 9th Circuit Court of Appeals.

The Division I decision also creates an issue of significant public interest by: (1) establishing a new standard of care for Washington family law practitioners who now must record Notices of Marital Lien Claims against the real estate holdings of non-party entities if the circumstances *may* give rise

to a "belief" that the adverse party in the dissolution proceeding *may* own an interest in the entity owning the real estate, and; (2) allows litigants to cloud the title to the real estate of non-party entities, pursuant to RCW 26.16.100, without notice to the entity and an opportunity for a hearing. More specifically, RCW 26.16.100 provides in pertinent part:

> A spouse or domestic partner having an interest in real estate, by virtue of the marriage relation or state registered domestic partnership, **the legal title of record to which real estate is or shall be held by the other**, may protect such interest.... by causing to be filed and recorded in the auditor's office of the county in which such real estate is situated an instrument in writing...

By application of RCW 26.16.110, recordation of a notice pursuant to RCW 26.16.100 expressly creates a cloud on the title of the real estate subject to the Notice.

Washington attorneys have known for many years that they may *not* lawfully cloud the title to real estate without having first afforded the owner notice and an opportunity for a hearing. Thus, in 1998, *Tri-State Development, Ltd. v. Johnston,* 160 F.3d 528 (9th Cir. 1998) held Washington's pre-

judgment attachment scheme violated Due Process because it allowed for attachment of the adverse party's real estate without prior notice and a hearing. *Tri-State* arose in the context of a prejudgment attachment of the defendant's real estate, without prior notice and a hearing. Applying prior Supreme Court jurisprudence, the Ninth Circuit concluded that even the temporary impact of an attachment, without prior notice and a hearing, deprives the litigant of property without due process, explaining [160 F.3d at 531]:

> The private interest at stake therefore is significant, for attachment, among other ills, "**ordinarily clouds title**; [and] impairs the ability to sell or otherwise alienate the property." Second, as in *Doehr,* the risk of erroneous deprivation is high because this case involves a factual inquiry and is not amenable to realistic assessment based only on "one-sided, self-serving, and conclusory submissions." [Citations omitted; emphasis added].

Tri-State Development thus held Washington's statutory attachment procedure unconstitutional even though it requires prompt post-attachment notice and a hearing, as well as a bond. *Id.* at 529-534.

Here, by recording a Notice of Marital Lien Claim, rather than resort to attachment, Hansen evaded both the post-hearing notice, hearing *and* bond requirements that would have applied had he used attachment. His use of Notices pursuant to RCW 26.16.100 thus succeeded in clouding title to the property while providing *none* of the Due Process safeguards that were *insufficient* to survive Due Process scrutiny in *Tri-State Development.*

Within this context, this Court has long recognized the danger posed by the recordation of statutory liens against real estate title to secure unadjudicated and unliquidated claims. Thus, forty (40) years ago, *Ross v. Scannell*, 97 Wn.2d 598, 605–606, 647 P.2d 1004 (1982) held that an attorneys may *not* lawfully record an attorney's statutory against real estate, explaining:

> RCW 60.40.010(4) is in derogation of the common law and therefore must be strictly construed. If the legislature had intended attorneys' liens to attach to real property as proceeds of a judgment, it would have included a provision to that effect as other states have done. . . .

> **The analysis requiring strict construction of the attorney lien statute is especially persuasive in light of the dangers of our countenancing the practice of attorneys attaching liens to real property for unadjudicated and unliquidated claims.** Although we recognize the common problems faced by attorneys in collecting their well deserved fees, the reasons for our hesitancy are apparent. **The result of our approving the practice would allow members of the Bar to cloud title to real property with "claims of attorney lien" without resort to any adjudication of such claims. The potential for economic coercion by attorneys is obvious. In today's economic setting a client may well be forced to settle the attorney's claim for fees, no matter how unfounded, simply to gain the ability to convey, lease or otherwise utilize the "liened" property.** [Emphasis added].

This Court similarly held in *Discipline of VanDerbeek,* 153 Wn.2d 64, 88, 101 P.3d 88 (2004) that an attorney's filing of a lien in disregard of *Ross v. Scannell,* "constitutes a violation of practice norms 'prejudicial to the administration of justice' under RPC 8.4(d)" warranting disciplinary sanctions). If the recordation of an attorney's fee lien to secure an unliquidated claim against the real estate of an attorney's former client violates practice norms, how then can the attorney's recordation of a marital lien claim against the real

estate of a non-party *not* violate practice norms?

Washington attorneys have also known for many years that they are *not* immune from personal liability when they use unconstitutional litigation tactics. *Wyatt v. Cole,* 504 U.S. 158, 162, 112 S. Ct. 1827, 118 L.Ed.2d 504 (1992) thus held that private parties, including attorneys, who invoke unconstitutional state replevin, garnishment or attachment procedures are not immune from liability.[3] See further, 1 Mallen, Legal Malpractice §6.1, p. 617-618 (2022 ed.) (Attorneys remain liable to non-client third persons in tort for "fraud, collusion, or a malicious or tortious act"). *Van*

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[3] State action is present due to the creation of the RCW 26.16.100 notice procedure and its ramifications under RCW 26.16.110. See, *e.g., Barrows v. Jackson,* 346 U.S. 249, 253-254, 73 S. Ct. 1031, 1033-1034, 97 L. Ed. 1586 (1953); *Shelley v. Kraemer,* 334 U.S. 1, 14, 68 S. Ct. 836, 842, 92 L. Ed. 1161 (1948); *Naoko Ohno v. Yuko Yasuma,* 723 F.3d 984, 993 (9th Cir. 2013). Accord, *Klem v. Washington Mut. Bank*, 176 Wn.2d 771, 790 n. 11, 295 P.3d 1179 (2013).

Blaricom v. Kronenberg, 112 Wn. App. 501, 50 P.3d 266 (2002) followed *Tri-State Development* and recognized a cause of action against the attorney who employed the unconstitutional, Washington pre-judgment attachment statute to cloud the title of real estate. Accord, *e.g. Mason v. Mason*, 19 Wn. App. 2d 803, 834-835, 497 P.3d 431 (2021)("An attorney can be liable for abuse of process where the attorney was alleged to have intentionally employed legal process for an inappropriate and extrinsic end"); *3M Co. v. AIME LLC*, 2021 WL 5824376 *4 (W.D. Wash. 12/08/21)(Upholding abuse of process counterclaim).

The Court should therefore grant review pursuant to RAP 13.4(b)(1), (2) and/or (4) because the opinion issued by Division I conflicts with decisions on this Court, the United States Supreme Court, the 9th Circuit Court of Appeals, and published decisions of the Washington appellate courts.

C. Allowing Garnishment of a Non-Party's

Account for the Debts of Another, Without Prior Notice and an Opportunity for Hearing Conflicts with This Court's Decision in *Olympic Forest Products, Inc. v. Chaussee Corp.* and the Washington PublishedAppellate Decisions in *Woody's Olympia Lumber, Inc. v. Roney* and *Fite v. Lee.*

The Court should also grant review of the Division I decision which approved the garnishment of a non-party's account for the debt of another without prior notice and an opportunity for a hearing, despite long-established precedent to the contrary.

More specifically, in 1973, this Court explained that "due process requires notice and an opportunity for hearing before the state authorizes the prejudgment garnishment of property [because] [n]one of the 'safeguards' available to defendant under RCW 7.33 is an acceptable substitute for a prior hearing. *Olympic Forest Products, Inc. v. Chaussee Corp.,* 82 Wn.2d 418, 430, 511 P.2d 1002 (1973). Indeed, none of Washington's garnishment statutes authorize garnishment of a non-party's assets to pay the judgment of a party rather than the debts of the

non-party whose accounts are garnished. Moreover, "it is well settled in this state that [an liquidated] claim is not subject to garnishment." *Woody's Olympia Lumber, Inc. v. Roney,* 9 Wn. App. 626, 628, 513 P.2d 849 (1973).

Here, regardless of whether Ms. Li qualified as a "judgment creditor" of Mr. Zheng within the meaning of RCW 6.27.020(1) by virtue of the Temporary Family Law Order, she unquestionably did *not* qualify as a judgment creditor of Z Real Estate. Accordingly, Mr. Hansen's remedy if authorized by RCW 6.27.020(1) would have been issuance of a garnishment to Z Real Estate for any amounts Z Real Estate owed Mr. Zheng—but not to garnish the bank of Z Real Estate for amounts that bank held for Z Real Estate. But Hansen decided against using the lawful means available to him, opting instead for the unlawful alternative.

Therefore, just as an attorney's resort to an unconstitutional pre-judgment attachment pursuant to RCW 26.16.100 subjects the attorney to personal liability for

damages, so too does a wrongfully issued garnishment that seizes the property of a non-party without notice and an opportunity for hearing. *E.g., Fite v. Lee*, 11 Wn. App. 21, 28, 521 P.2d 964(1974)(cause of action against attorney for wrongful garnishment).

The Court should thus grant review of the Division I decision which approved Respondent's resort to the unconstitutional seizure of Z Real Estate's bank account without prior notice and an opportunity for hearing, pursuant to RAP 13.4(b)(1) and/or (b)(2).

D. Division I's Application of Collateral Estoppel Conflicts with This Court's Decisions in *McDaniels v. Carlson* and *Standlee v. Smith*, as well as Numerous Published Washington Appellate Decisions.

The Court should also grant review pursuant to RAP 13.4 (b)(1) and/or (b)(2) of the clearly erroneous decision by Division I, holding that Respondent Hansen's use of

unconstitutional litigation tactics against Petitioners constituted the identical issues decided in *5529 University, LLC v. Li.*

Ende, 14A *Wash. Prac., Civil Proc.* §35:32 (3d ed. 08/21 update) explains that:

> The doctrine of collateral estoppel operates only as to issues that were actually litigated and determined in the prior lawsuit. Unlike res judicata, collateral estoppel does not bar relitigation of issues that could have been raised in the first lawsuit but were not.

This Court thus explained in *McDaniels v. Carlson*, 108 Wn.2d 299, 305, 738 P.2d 254 (1987) that "[c]ollateral estoppel requires that the issue decided in the prior adjudication is identical with the one at hand. **Where an issue arises in two entirely different contexts, this requirement is not met.**" [Citations omitted; emphasis added], *quoted with approval in Cincinnati Specialty Underwriters Ins. Co. v. Milionis Constr., Inc.,* 2018 WL 6492956 *3 (E.D. Wash. 12/10/2018). *Standlee v. Smith*, 83 Wn.2d 405, 408, 518 P.2d 721 (1974) similarly explained:

> Collateral estoppel is confined, however, to 'situations

> where the matter raised in the second suit is identical in all respects with that decided in the first proceeding and where the controlling facts and applicable legal rules remain unchanged.' . . . Even if the issue is identical and the facts remain constant, the adjudication in the first case does not estop the parties in the second, unless the matter raised in the second case involves substantially 'the same bundle of legal principles that contributed to the rendering of the first judgment.' . . .

Numerous published Washington appellate cases confirm this basic principle—which cannot be reconciled with the Division I Opinion, including: *Lemond v. State, Dep't of Licensing*, 143 Wn. App. 797, 805, 180 P.3d 829 (2008), *quoting Standlee; Maytown Sand & Gravel LLC v. Thurston Cty.,* 198 Wn. App. 560, 583, 395 P.3d 149 (2017) *aff'd in part, rev'd in part*, 191 Wn.2d 392, 423 P.3d 223 (2018)("tortious interference with a business expectancy is not identical to any issue heard before the Hearing Examiner"); *Lopez-Vasquez v. Dep't of Labor & Indus. of State of Washington*, 168 Wn. App. 341, 346, 276 P.3d 354 (2012); *Regan v. McLachlan*, 163 Wn. App. 171, 182, 257 P.3d 1122 (2011); *Emmett v. City of*

Tacoma, 2015 WL 13546990 *4 (W.D. Wash. Feb. 24, 2015), *aff'd,* 691 Fed. Appx. 475 (9th Cir. 2017).

Here, *5529 University, LLC v. Li, supra,* decided only the following issues [at *2-4]:

1. Whether the trial court abused its discretion when it declined to award attorney fees against Li, regardless of whether the marital liens and garnishment were invalid:

2. Whether the trial court abused its discretion when it declined to award attorney fees against Li under RCW 4.28.328 regardless of whether the marital liens were invalid;

3. Whether the trial court abused its discretion in refusing to award attorney fees and costs despite the fact that the marital liens were invalid;

4. Whether the trial court abused its discretion in refusing to award attorney fees under RCW 6.27.320 relative to the garnishment.

Indeed, the claims of the Entities and Z Real Estate against Respondent Hansen are *not* derivative but instead exist independently from the claims asserted against Hansen's client, Ms. Li. *Fite v. Lee, supra* 11 Wn. App. at 28, thus explains that "[b]y its very nature, an abuse of process by an

attorney. . .violates an attorney's oath, his canons of ethics, and his duty to the public as an officer of the court." As a result, "the scope of the attorney's implied authority as an agent should not, as a matter of law, extend to acts which constitute an abuse of legal process." accord, *Mason, supra* 19 Wn. App. 2d at 450. Moreover, in practical terms, the attorney—and not the client--should be responsible when the attorney employs procedures that a layperson client is unlikely to recognize as unlawful. Therefore, the release (or lack of liability for damages) of the attorney's client does *not* bar a separate action by the victim of an unlawful process against the attorney for the same claims. *E.g., Id.*; *Van Blaricom, supra,* 112 Wn. App. at 507.

Here, neither the trial court in the underlying dissolution nor Division I on appeal, ever considered or decided whether Respondent Hansen had used unconstitutional litigation procedures against the Petitioners. Indeed, the trial court had

correctly concluded that collateral estoppel (based on *5229 University v. Li*) does *not* bar the claims of the Entities and Z Real Estate against Hansen, due to the lack of an identity of issues. RP 27:4-28:2, 30:16-21. Petitioner's Opening Brief [pp. 14-20] similarly explained that collateral estoppel does *not* bar Petitioners' claims, a conclusion which Hansen did not dispute. Resp. Br., p. 21.

Division I nevertheless held that collateral estoppel bars Petitioners' claims "based on the recording of the liens and the garnishment" based on a perceived identity of issues. Appx. 14.[4] That conclusion was clearly wrong. The Court should therefore grant review pursuant to RAP 13.4(b)(1) and/or (b)(2) because Division I's reasoning conflicts with this Court's prior decisions, as well as numerous published decisions of Washington Courts of Appeal.

E. Respondents' Use of Unconstitutional

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[4] Division I acknowledged that Respondent had the burden of proving each essential element of its collateral estoppel affirmative defense [Appx. 14], but inexplicably placed the burden on Petitioners to establish whether "Hansen acted without knowledge or consent of his client." Appx. 15.

Litigation Tactics to Secure the Their Unpaid Fees Constitutes an Unfair or Deceptive Practice within the Consumer Protection Act.

The Consumer Protection Act applies to the entrepreneurial aspects of the practice of law including "how the price of legal services is determined, billed, and collected and the way a law firm obtains, retains, and dismisses clients. *Short v. Demopolis*, 103 Wn.2d 52, 61, 691 P.2d 163, 168 (1984). The Consumer Protection Act does *not* require that the plaintiff be a consumer or in a business relationship with the actor (*i.e.,* Hansen). *E.g., Panag v. Farmers Ins. Co. of Washington*, 166 Wn.2d 27, 39, 204 P.3d 885 (2009). Moreover, "there is no adversarial exemption from suit under the CPA. . .[because] the five *Hangman Ridge* elements of a CPA citizen suit assure that the plaintiff is a proper party to bring suit." *Id.* 166 Wn.2d at 44. The Consumer Protection Act should therefore govern the conduct of an attorney who used unconstitutional litigation tactics to secure his fees *and*

protect non-parties against such unconstitutional lien filings.

Division I nevertheless held, as a matter of law, that Respondent's unconstitutional attachment and garnishment are *not* unfair or deceptive as a matter of law. However, as this Court recently explained in *Young v. Toyota Motor Sales, U.S.A.,* 196 Wn.2d 310, 317-318, 472 P.3d 990 (2020):

> Where…the relevant operative facts are undisputed, whether that act or practice is "unfair or deceptive" is a question of law. "A plaintiff need not show the act in question was intended to deceive, only that it had the capacity to deceive a substantial portion of the public. **"Deception exists 'if there is a representation, omission or practice that is likely to mislead' a reasonable consumer**." [Citations omitted; emphasis added].

The term "unfair or deceptive" is not otherwise defined in the Act. RCW 19.86.020. However, no intentional deception need be proved, only a capacity or tendency to deceive. *State v. A.N.W. Seed Corp.,* 116 Wn.2d 39, 50, 802 P.2d 1353 (1991). Thus, "an act or practice can be unfair without being deceptive." *Id.* As this Court explained in *Panag, supra* 166 Wn.2d at "[t]he deceptive use of traditional debt

collection methods to induce someone to remand payment of an alleged debt is precisely the kind of 'inventive' unfair and deceptive activity the CPA was intended to reach." *Panag* thus found collection letters alleging insurance company subrogation demands unfair and deceptive because they implied a debt that was due when the claim instead represented an unliquidated claim.

Here, resorting to unconstitutional litigation tactics to cloud title to a non-party's real estate and thus secure the attorney's unpaid fees is no less unfair or deceptive. (For example, would recordation of the attorney fee lien in *Ross v. Scannell* qualify as unfair or deceptive)? Moreover, Respondent Hansen is an experienced family law attorney in Seattle who can readily record such Notices of Marital Lien Claims against non-parties in the future [CP 155-157], as can every other family law attorney practicing in Washington.

The Court should therefore grant review of the Division I decision that an attorney's recordation of unconstitutional

liens to cloud title to real estate and secure the attorney's unpaid fees does indeed constitute an unfair and/or deceptive practice subject to the Consumer Protection Act, pursuant to RAP 13.4 (b)(1) and/or (b)(2).

V. Conclusion

Petitioners therefore respectfully request that the Court grant review and, following review, reverse the Court of Appeals and remand this matter for trial with instructions to the trial court to enter judgment on the issue of liability for Petitioners pending trial on the merits.

VI. RAP 18.17 Certification

This brief complies with the type-volume limitation of RAP 18.17 because this brief contains 4,959 words, which is less than the 5,000-word limitation.

DATED: October 11, 2022.

WAID LAW OFFICE, PLLC

BY: /s/ Brian J. Waid
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CERTIFICATE OF SERVICE

This document was filed via CM/ECF and will be automatically served on all registered participants. Additional copies served by mail: None, unless requested.

DATED: October 11, 2022.

WAID LAW OFFICE, PLLC

BY: /s/ Brian J. Waid
Brian J. Waid
WSBA No. 26038
Attorney for Petitioners

Hon. Suzanne Parisien
Date of Hearing: July 16, 2021
Time of Hearing: 11:00 a.m.

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

4501 38TH WEST SEATTLE, LLC, a Washington Limited Liability Company; RUN YONG USA, LLC, an Oregon Limited Liability Company; 5229 UNIVERSITY, LLC, a Washington Limited Liability Company, and; Z REAL ESTATE, INC., a Washington corporation, **Plaintiffs,** **vs.** **CRAIG JONATHAN HANSEN, Individually and on Behalf of the Marital Community of CRAIG JONATHAN HANSEN and JANE DOE HANSEN, and; HANSEN LAW GROUP, P.S., A Washington Professional Services Corporation,** **Defendants.**	**NO. 21-2-03925-8 SEA** **[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

This matter came before the Court for hearing on the 16th day of July 2021, on Plaintiffs' Motion for Partial Summary Judgment. The Court heard the oral arguments

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of counsel for Plaintiff, Brian J. Waid, and for Defendants, Lori Hurl. The Court also considered the following documents and evidence which were brought to the Court's attention before the order on summary judgment was entered.

On behalf of Plaintiffs:

1. Plaintiffs' Motion for Partial Summary Judgment;

2. Plaintiffs' First Amended Complaint;

3. Defendants' Answer to Plaintiffs' First Amended Complaint;

4. Declaration of Brian J. Waid dated June 18, 2021, with Exhibits 1 through 8 attached thereto;

On behalf of Defendants:

6. Defendants' Opposition to Plaintiffs' Motion for Partial Summary Judgment;

7. Declaration of Craig Jonathan Hansen dated July 3, 2021;

On behalf of Plaintiff in Reply:

8. Plaintiffs' Reply in Support of Plaintiffs' Motion for Partial Summary Judgment.

Based on the arguments of counsel, and the pleadings and evidence, the Court **GRANTS** Plaintiff's Motion for Partial Summary Judgment and Orders that the following issues have been decided, as a matter of law:

A. Defendant Craig Jonathan Hansen unlawfully recorded the Notice of Claim of Marital Lien recorded by Hansen Law Group on behalf of Jialin Li against the real estate owned by 4501 38th West Seattle, LLC located at 4501 38th Ave W., Seattle, Washington 98126 on December 31, 2018 and bearing King County Washington

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recordation no. 20181231000158.

B. Defendant Craig Jonathan Hansen unlawfully recorded the Notice of Claim of Marital Lien recorded by Hansen Law Group on behalf of Jialin Li against the real estate owned by 5229 University, LLC located at 5229 University Way NE, Seattle, Washington 98105 on January 2, 2019 and bearing King County Washington recordation no. 20190102000173.

C. Defendant Craig Jonathan Hansen unlawfully recorded the Notice of Claim of Marital Lien recorded by Hansen Law Group on behalf of Jialin Li against the real estate owned by Run Yong USA, LLC located at 2460 73rd Ave. SE, Mercer Island, Washington on February 15, 2019 and bearing King County Washington recordation no. 20190215000430.

D. Defendant Craig Jonathan Hansen unlawfully garnished the bank account of Z Real Estate, Inc. in King County Superior Court case no. 18-3-03267-2 SEA entitled *Marriage of Li v. Zheng*.

E. Defendant Craig Jonathan Hansen's unlawful recordation of the Notice against real estate owned by 4501 38th West Seattle, LLC located at 4501 38th Ave W., Seattle, Washington 98126 on December 31, 2018 constituted an unfair and deceptive act in the entrepreneurial aspects of the practice of law in violation of the Washington Consumer Protection Act, RCW 19.86.

F. Defendant Craig Jonathan Hansen's unlawful recordation of the lien against the real estate owned by 5229 University, LLC located at 5229 University Way

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NE, Seattle, Washington 98105 on January 2, 2019 constituted an unfair and deceptive act in the entrepreneurial aspects of the practice of law in violation of the Washington Consumer Protection Act, RCW 19.86

G. Defendant Craig Jonathan Hansen's unlawful recordation of the lien against the real estate owned by Run Yong USA, LLC located at 2460 73rd Ave. SE, Mercer Island, Washington on February 15, 2019 constituted an unfair and deceptive act in the entrepreneurial aspects of the practice of law in violation of the Washington Consumer Protection Act, RCW 19.86

H. Defendant Craig Jonathan Hansen's unlawful garnishment of the bank account of Z Real Estate, Inc. constituted an unfair and deceptive act in the entrepreneurial aspects of the practice of law in violation of the Washington Consumer Protection Act, RCW 19.86.

All other issues remain for trial.

DATED this ___ day of July 2021 at Seattle, Washington.

_____
Hon. Suzanne Parisien

PRESENTED BY:

WAID LAW OFFICE, PLLC

BY:/s/ Brian J. Waid_____
BRIAN J. WAID
WSBA No. 26038
Attorney for Plaintiffs

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King County Superior Court
Judicial Electronic Signature Page

Case Number:	21-2-03925-8
Case Title:	4501 38TH WEST SEATTLE LLC ET AL VS HANSEN ET ANO
Document Title:	ORDER RE PARTIAL SUMMARY JUDGMENT
Signed By:	Suzanne Parisien
Date:	August 12, 2021

Judge: Suzanne Parisien

This document is signed in accordance with the provisions in GR 30.

Certificate Hash:	C500F9769F1E11AD3B962C5FEC95F1413821C70B
Certificate effective date:	7/16/2018 2:19:35 PM
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Certificate Issued by:	C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA, O=KCDJA, CN="Suzanne Parisen: VMmj0wrS5hGRAa/2AFk6yQ=="

Honorable Suzanne Parisien
Hearing Date: December 3, 2021
Hearing Time: 10:00 a.m.

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

4501 38th WEST SEATTLE, LLC, a Washington Limited Liability Company RUN YONG USA, LLC, an Oregon Limited Liability Company; 5229 UNIVERSITY, LLC, a Washington Limited Liability Company, and; Z REAL ESTATE, INC., a Washington corporation, Plaintiffs, vs. CRAIG JONATHAN HANSEN, Individually and on Behalf of the Marital Community of CRAIG JONATHAN HANSEN and JANE DOE HANSEN, and; HANSEN LAW GROUP, P.S., A Washington Professional Services Corporation, Defendants.	No. 21-2-03925-8 SEA ORDER GRANTING DEFENDANTS' MOTION SUMMARY JUDGMENT **[CLERK'S ACTION REQUIRED]**

THIS MATTER having come before the Court in the above-entitled matter on Defendants' Motion for Summary Judgment, and the Court having reviewed the following:

1. Defendants' Motion for Summary Judgment;

2. Plaintiffs' Response to Defendants' Motion for Summary Judgment, if any;

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3. Defendants' Reply in Support of Motion for Summary Judgment, if any;

4. Defendants' Motion to Reconsider and Reverse Order Granting Plaintiffs' Motion for Partial Summary Judgment in Light of Court of Appeals Decision in University, LLC, et al v. Jialin Li and Grant Summary Judgment to Defendants on All Claims;

5. Plaintiffs' Response to Show Cause Order;

6. The October 4, 2021 Court of Appeals Division One opinion in *5229 University, LLC, et al. v. Jialin Li*, No. 81571-7-I;

7. Defendants' Motion for Reconsideration of Order Granting Plaintiffs' Motion for Partial Summary Judgment;

8. Defendants' Opposition to Plaintiffs' Motion for Partial Summary Judgment;

9. Declaration of Craig Jonathan Hansen in Support of Defendants' Opposition to Plaintiffs' Motion for Partial Summary Judgment;

10. Plaintiffs' Motion for Partial Summary Judgment;

11. Declaration of Brian J. Waid in Support of Plaintiffs' Motion for Partial Summary Judgment;

12. Plaintiffs' Reply in Support of Plaintiffs' Motion for Partial Summary Judgment;

13. _____;

14. _____;

15. _____; and

16. _____.

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Based on the above-described review and analysis, the Court ORDERS that Defendants' Motion for Summary Judgment is GRANTED. Plaintiff's claims against Defendants are dismissed in their entirety, with prejudice.

DATED this 3rd day of Dec., 2021.

Honorable Suzanne Parisien

Presented by:

FORSBERG & UMLAUF, P.S.

Lori Worthington Hurl, WSBA #40647
Kristin E. Bateman, WSBA #54681
Attorneys for Defendants

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FILED
9/12/2022
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

4501 38th WEST SEATTLE, LLC, a Washington Limited Liability Company RUN YONG USA, LLC, an Oregon Limited Liability Company; 5229 UNIVERSITY, LLC, a Washington Limited Liability Company, and; Z REAL ESTATE, INC., a Washington corporation, Appellants, v. CRAIG JONATHAN HANSEN, Individually and on Behalf of the Marital Community of CRAIG JONATHAN HANSEN and JANE DOE HANSEN, and; HANSEN LAW GROUP, P.S., a Washington Professional Services Corporation Respondents.	No. 83454-1-I DIVISION ONE UNPUBLISHED OPINION

MANN, J. — 4501 38th West Seattle LLC, Run Yong USA LLC, 5229 University LLC, and Z Real Estate, Inc. (the Entities) appeal the trial court's order granting summary judgment and dismissing their claims against attorney, Craig Jonathan Hansen, for filing marital liens and a garnishment during a separate dissolution proceeding. The Entities argue that: (1) Hansen unlawfully recorded notices of marital

lien claims against the real estate Entities, (2) Hansen unlawfully garnished a bank account without notice and an opportunity for a hearing, and (3) Hansen violated the Washington Consumer Protection Act (CPA), ch. 19.86 RCW.

We conclude that the Entities' claims for abuse of process in the recording of the marital liens and garnishment are collaterally estopped by our recent unpublished decision in 5229 University, LLC v. Jialin Li, No. 81571-7-I (Wash. Ct. App. Oct. 4, 2021) (unpublished), https://www.courts.wa.gov/opinions/pdf/815717.pdf. We also conclude that the Entities failed to prove that Hansen's actions were an unfair or deceptive act or practice in violation of the CPA.

We affirm.

FACTS

A. Background

Jialin Li and Haolin Zheng married in China in 2011 and later moved to Washington. They have two children. Zheng controlled several limited liability companies (LLCs) related to real estate investing, including the Entities. Zheng's parents gave him money to purchase properties in the United States, and Zheng kept this money in bank accounts in his name before purchasing the properties. Zheng took title to the properties in his name. Li was unaware of Zheng's business ventures and investments. After an assault, Li filed for dissolution in May 2018. Hansen represented Li in the King County Superior Court dissolution proceedings.[1] Hansen is an experienced family law attorney having practiced for over 25 years.

[1] In re Marriage of Jialin Li and Zheng, No. 18-3-03267-2 SEA.

After Li filed for dissolution, Zheng drained the only bank account to which Li had access to and cut off her credit card. In June 2018, a trial court order restrained Zheng from liquidating or transferring assets and requiring him to pay spousal support to Li. In November 2018, Zheng sold an Olive Way property for a little over $10 million in violation of the June 2018 court order. Zheng placed the proceeds in a bank account, in his name, for Z Real Estate, Inc. and ZN Properties LLC, which he owned and controlled. Zheng moved to China at the end of 2018 and failed to pay court ordered support to Li and the children's tuition.

After realizing Zheng had left the country, Hansen recorded marital liens on Li's behalf against real estate owned by 4501 38th West Seattle LLC, 5229 University LLC, and Run Yong USA LLC. On January 2, 2019, Hansen obtained a restraining order preventing Zheng from transferring, liquidating, or selling any assets belonging to 4501 38th West Seattle LLC, and any assets belonging to 5229 University LLC.

On February 14, 2019, a superior court commissioner in the dissolution case ordered Zheng to pay $25,000 in attorney fees, and other amounts totaling $41,579, by January 30, 2019. The order also restrained Zheng "from transferring any funds from . . . all accounts in the name of . . . Z Real Estate, Inc." The order stated that the assets and property listed in the order were "presumptively community property. The court also finds that [Zheng's] representations to secretary of state, the IRS, and banks, denote ownership."

On April 4, 2019, the trial court granted Li a writ of garnishment over Zheng's U.S. Bank account to ensure payment of the February 14, 2019, judgment.

B. The Companion Case

In response to the liens and garnishment, the Entities sued Li in King County Superior Court.[2] The complaint alleged causes of action against Li for frivolous liens, slander of title, and declaratory judgment. The trial court linked the Entities action with the dissolution action.

After a bench trial and detailed tracing of assets, the court determined that Li and the marital community did not have an ownership interest in the subject assets. The court found that Zheng's moving, hiding, and obfuscation of assets made it difficult to determine who really owned the property or money at issue. The court also concluded that Zheng's lack of credibility made it reasonable for Li and Hansen to doubt the ownership of the LLCs. While the liens were meritless, the court found that they were not frivolous and did not award damages or attorney fees to the Entities. The Entities appealed. See 5229 Univ., LLC, slip op. at 1.

C. The Current Action

While the companion case was pending appeal, on March 25, 2021, the Entities sued Hansen. The Entities claimed that Hansen and his law firm were liable for abuse of process, "unconstitutional taking without due process," and breach of the CPA in relation to the liens and the garnishment. On August 12, 2021, the trial court granted the Entities' motion for partial summary judgment.

On October 4, 2021, this court affirmed the trial court's refusal to award fees or costs in the companion case, holding that the liens and garnishment "were filed with substantial justification" and declined to overlook Zheng and his family's actions leading

[2] 5229 Univ., LLC v. Jialin Li, No. 19-2-05825-1 SEA.

to the justification for the liens and garnishment. 5229 Univ., LLC, slip op. at 1. We held that because Li and Hansen reasonably believed the assets belonged to the community, the liens were substantially justified both as lis pendens claims and community property liens under RCW 26.16.100, and that the garnishment was proper under RCW 6.27.060. 5229 Univ., LLC, slip op. at 3-8.

In light of our decision in 5229 Univ., LLC, the trial court, sua sponte, called for a show cause hearing to reconsider its order granting partial summary judgment. On November 1, 2021, after briefing and oral argument, the trial court reversed its August 12, 2021, order and denied the Entities' motion for partial summary judgment. On December 3, 2021, the trial court granted Hansen's motion for summary judgment, dismissing the Entities' claims with prejudice.

The Entities appeal.

ANALYSIS

A. Standard of Review

"On appeal of summary judgment, the standard of review is de novo, and the appellate court performs the same inquiry as the trial court." Martin v. Gonzaga Univ., 191 Wn.2d 712, 722, 425 P.3d 837 (2018) (quoting Lybbert v. Grant County, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000)). This court will affirm an order granting summary judgment if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c); Keck v. Collins, 184 Wn.2d 358, 370, 357 P.3d 1080 (2015).

B. Collateral Estoppel

The Entities argue that the court's decision in 5229 Univ., LLC, does not bar the claims in this case because there is no identity of issues. We disagree.

Collateral estoppel is an affirmative defense. CR 8(c). The elements of collateral estoppel include: (1) the issue decided in the prior case was identical to the issue presented in the later case, (2) the prior case resulted in a final judgment on the merits, (3) the party to be estopped was a party or in privity with a party in the prior action, and (4) application of the doctrine would not work an injustice. Weaver v. City of Everett, 194 Wn.2d 464, 473, 450 P.3d 177 (2019). The proponent of collateral estoppel bears the burden of proving each element. Behr v. Anderson, 18 Wn. App. 2d 341, 376, 491 P.3d 189 (2021).

"When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." Nielson By and Through Nielson v. Spanaway Gen. Med. Clinic, Inc., 135 Wn.2d 255, 262, 956 P.2d 312 (1998) (citing RESTATEMENT (SECOND) OF JUDGMENTS § 27 (1982)). "[A]pplication of collateral estoppel is limited to situations where the issue presented in the second proceeding is identical in all respects to an issue decided in the prior proceeding, and 'where the controlling facts and applicable legal rules remain unchanged.'" Lemond v. State, Dep't of Licensing, 143 Wn. App. 797, 805, 180 P.3d 829 (2008) (quoting Standlee v. Smith, 83 Wn.2d 405, 408, 518 P.2d 721 (1974)). We review de novo whether collateral estoppel bars relitigation of a particular legal claim.

Christensen v. Grant County Hosp. Dist. No. 1, 152 Wn.2d 299, 305, 96 P.3d 957 (2004).

The Entities cite several cases for the proposition that the issues raised in the case against Li are not identical with its claims against Hansen. The cases are readily distinguished. For example, Fite v. Lee, 11 Wn. App. 21, 29, 521 P.2d 964 (1974), involved claims of abuse of legal process brought against a former wife and the attorneys that had represented her in a dissolution action. The claims concerned whether, during the dissolution proceeding, writs of garnishment were improperly issued against the husband's assets. The court dismissed the claims against the wife on summary judgment after she testified that she was not informed of the writs, did not consent to the writs, and would not have consented if she had known. Fite, 11 Wn. App. at 24. The court of appeals rejected the attorneys' subsequent claim that res judicata should bar claims against them:

> It follows then that if an attorney has, without the knowledge or consent of his client, abused process to the damage of another, the attorney acts outside the scope of his agency and the client should not be derivatively liable. See Barton v. Tombari, 120 Wash. 331, 207 P. 239 (1922); See RESTATEMENT (SECOND) OF AGENCY § 228(2) (1958); See RESTATEMENT (SECOND) OF AGENCY § 246, Comment b (1958). Consequently dismissal of the action against the client should not be res judicata of the injured party's claim against the attorneys.

Fite, 11 Wn. App. at 29.

Here, in contrast, there is no argument that Hansen acted without knowledge or consent of his client. Indeed, in 5229 Univ., LLC, this court concluded that Zheng's conduct "gave Li and her counsel a substantial basis to believe the community had a claim to the assets." Slip op. at 3.

Similarly, Mason v. Mason, 19 Wn. App. 2d 803, 497 P.3d 431 (2021), involved abuse of process and intentional infliction of emotion distress claims brought by a former wife against her husband and his attorneys following a dissolution action. Division Two of this court reversed the trial court's decision dismissing the wife's action based on collateral estoppel. The court concluded: "neither Tatyana's intentional infliction of emotional distress claim nor her abuse of process claim were 'actually litigated' in the prior family law proceedings. Nor are her tort claims 'identical' to any issue addressed in the earlier family law proceedings. Accordingly, collateral estoppel does not apply." Mason, 19 Wn. App. at 828. In contrast, here, the Entities' claims for improper filing of the marital liens and garnishment were litigated in 5229 Univ., LLC.

Finally, Regan v. McLachlan, 163 Wn. App. 171, 257 P.3d 1122 (2011), involved negligence and breach of fiduciary duty claims brought against Pierce County by the underwriter of a forfeited bail bond. The plaintiff argued that the county clerk erred by returning the bond to the bond issuer instead of the underwriter. The trial court dismissed the plaintiff's claims, in part, on collateral estoppel based on the underlying criminal case. The court of appeals reversed, explaining:

> But Cruz was a criminal case between the State and Cruz. The issue on appeal in Cruz was whether the trial court had jurisdiction in the criminal matter to order Metro City to redeposit the remitted bail bond money into the court registry. We determined that the Cruz trial court did not have jurisdiction to require "Metro City to remit funds to the clerk of the court in the criminal case involving the State and Cruz" and we reversed the trial court's order. Furthermore, in doing so, we stated, "Whether Fairmont and Fire Insurance Co. otherwise have a claim against the clerk, Metro City, or McLachlan is not before us."
>
> Here, after our decision in Cruz, Regan sued Pierce County, alleging negligence and breach of its fiduciary duty. In Cruz, neither the trial court nor we decided whether Fairmont had a civil cause of action against

> Pierce County for its actions in remitting the funds to Metro City. Regan, Fairmont, and Pierce County were not parties to the Cruz criminal case.

Regan, 163 Wn. App. at 181-82.

Again, in contrast, the Entities' claims for improper marital liens and garnishment were litigated and decided in 5229 Univ., LLC.

We conclude that the elements of collateral estoppel are met. The Entities' claims against Hansen for abuse of process based on the recording of liens and the garnishment are barred by res judicata.

C. Consumer Protection Act

The Entities argue that Hansen violated the CPA, by filing the liens and garnishment to unlawfully secure his unpaid attorney fees from Li. To satisfy a CPA claim, the claimant must prove: (1) an unfair or deceptive act or practice; (2) in trade or commerce; (3) that affects or has the capacity to affect the public interest; (4) injury to business or property; and (5) causation. Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wn.2d 778, 787-793, 719 P.2d 531 (1986). The Entities' CPA claim fails on the first prong.

The Entities have failed to establish how Hansen's conduct constituted an unfair or deceptive act or practice. A CPA claim "may be predicated upon 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 public interest." Klem v. Wash. Mut. Bank, 176 Wn.2d 771, 787, 295 P.2d 1179 (2013).

The Entities have shown no statutory violation, nor have they provided evidence proving how Hansen's conduct had the capacity to deceive substantial portions of the public or how it violated the public interest. This court held that the liens and garnishment were substantially justified and that "it is clear why counsel sought to protect what they reasonably believed was community property. The property owners were, at best, complicit in Zheng's misconduct." 5229 Univ., LLC, slip op. at 5. This court also held that the liens were substantially justified as lis pendens claims under RCW 26.60.100, and the garnishment was proper under RCW 6.27.060. 5229 Univ., LLC, slip op. at 3-8. Hansen's conduct was not an unfair or deceptive act under the CPA.

The Entities assert, based solely on the fact that Li had unpaid legal fees, that Hansen used the liens and garnishment to secure Li's outstanding legal fees, and that RCW 60.40.010 "automatically" created an attorney fee lien for Hansen against the funds recovered from the marital liens and garnishment.[3] But the Entities fail to explain or cite authority supporting the conclusion that an attorney fee lien under RCW 60.40.010 somehow casts the liens and garnishment as unfair or deceptive under the CPA. Nor is there any evidence that Hansen asserted or pursued any kind of attorney fee lien, based on RCW 60.40.010 or other authority, against the funds Li recovered from the liens or garnishment. The Entities claims are speculative at best.

The Entities' assertion that Hansen's recording of the marital liens and garnishment was designed to cloud their title to their real estate without legal authority is

[3] RCW 60.40.010(1)(b) provides that an "attorney has a lien for his or her compensation, whether specially agreed upon or implied, as hereinafter provided: . . . (b) upon money in the attorney's hands belonging to the client."

also unsupported by the record. To the contrary, the liens were designed to prevent Zheng from liquidating or transferring additional community assets in violation of the June 2018 order, which he had already violated—and to secure Zheng's obligations under the January 2 and February 14 orders. The marital liens were substantially justified both as lis pendens claims and community property liens under RCW 26.16.100, and Hansen reasonably believed the community had an interest in the subject real estate. See 5229 Univ., LLC, slip op. at 3-7. The Entities fail to prove that Hansen's conduct was illegal, unfair, or deceptive.

We conclude that the Entities' CPA claim fails on the first prong.

Affirmed.

Mann, J.

WE CONCUR:

Andrus, C.J.

Dwyer, J.

APPPENDIX OF STATUTES AND RULES

RULE 8. GENERAL RULES OF PLEADING

. . . .

(c) Affirmative Defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fault of a nonparty, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitation, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

RCW 6.27.020. Grounds for issuance of writ--Time of issuance of prejudgment writs

(1) The clerks of the superior courts and district courts of this state may issue writs of garnishment returnable to their respective courts for the benefit of a judgment creditor who has a judgment wholly or partially unsatisfied in the court from which the garnishment is sought.
(2) Writs of garnishment may be issued in district court with like effect by the attorney of record for the judgment creditor, and the form of writ shall be substantially the same as when issued by the court except that it shall be subscribed only by the signature of such attorney.
(3) Except as otherwise provided in RCW 6.27.040 and 6.27.330, the superior courts and district courts of this state may issue prejudgment writs of garnishment to a plaintiff at the time of commencement of an action or at any time afterward, subject to the requirements of chapter 6.26 RCW.

RCW 19.86.020. Unfair competition, practices, declared unlawful

Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

RCW 26.16.100. Claim of spouse or domestic partner in community realty to be filed

A spouse or domestic partner having an interest in real estate, by virtue of the marriage relation or state registered domestic partnership, the legal title of record to which real estate is or shall be held by the other, may protect such interest from sale or disposition by the other spouse or other domestic partner, as the case may be, in whose name the legal title is held, by causing to be filed and recorded in the auditor's office of the county in which such real estate is situated an instrument in writing setting forth that the person filing such instrument is the spouse or domestic partner, as the case may be, of the person holding the legal title to the real estate in question, describing such real estate and the claimant's interest therein; and when thus presented for record such instrument shall be filed and recorded by the auditor of the county in which such real estate is situated, in the same manner and with like effect as regards notice to all the world, as deeds of real estate are filed and recorded. And if either spouse or either domestic partner fails to cause such an instrument to be filed in the auditor's office in the county in which real estate is situated, the legal title to which is held by the other, within a period of ninety days from the date when such legal title has been made a matter of record, any actual bona fide purchaser of such real estate from the person in whose name the legal title stands of record, receiving a deed of such real estate from the person thus holding the legal title, shall be deemed and held to have received the full legal and equitable title to such real estate free and clear of all claim of the other spouse or other domestic partner.

26.16.110. Cloud on title--Removal

The instrument in writing provided for in RCW 26.16.100 shall be deemed to be a cloud upon the title of said real estate, and may be removed by the release of the party filing the same, or by any court having jurisdiction in the county where said real estate is situated, whenever it shall appear to said court that the real estate described in said instrument is the separate property of the person in whose name the title to the said real estate, or any part thereof, appears to be vested, from the conveyances on record in the office of the auditor of the county where said real estate is situated.

WAID LAW OFFICE

October 11, 2022 - 4:14 PM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	83454-1
Appellate Court Case Title:	4501 38th West Seattle, LLC, et al, Appellants v. Craig Jonathan Hansen, et al, Respondents

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Petition for Review

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