No. 102655-2

SUPREME COURT
OF THE STATE WASHINGTON

BECKY HOANG and NHAN HOANG, and the marital community comprised thereof,

Defendants/Appellants,

v.

TRANG HUYNH NGUYEN, an individual,

Plaintiff/Respondent.

ANSWER TO PETITION FOR REVIEW

Lawrence S. Glosser, WSBA #25098
Ryanne S. Mathisen, WSBA #56000
AHLERS, CRESSMAN, & SLEIGHT PLLC
1325 Fourth Avenue
Suite 1850
Seattle, Washington 98101
Larry.glosser@acslawyers.com
Ryanne.mathisen@acslawyers.com
Telephone: (206) 287-9900
Facsimile: (206) 934-1139
Attorneys for Trang Huynh Nguyen

Table of Contents

Cases

Statutes

Rules

I. INTRODUCTION

This case involves violations of the Mortgage Broker Protection Act ("MBPA"), chapter 19.146 RCW, by a previously licensed loan originator Becky Hoang, *per se* violations of the Consumer Protection Act ("CPA"), chapter 19.86; as well as conversion, fraud, and constructive trust violations committed by Appellants Ms. Hoang and her husband, Nhan Hoang. In furtherance of these violations, Ms. Hoang took advantage of the trust and friendship she developed with Respondent Trang Nguyen, all while Ms. Hoang held herself out as a loan originator and provided services within the scope of that definition (and received compensation for the same).

Now, the Hoangs ask this Court to disregard the clear language and intent of the legislature in the MBPA and create an exception for MBPA violations where a loan originator establishes trust and becomes friends with their victim(s) before engaging in violative conduct. This is precisely the opposite of what the legislature intended when it found and declared that

conduct under the MBPA "substantially affects the public interest, requiring that all actions in mortgage brokering be actuated by good faith, and that mortgage brokers, designated brokers, loan originators, and other persons subject to this chapter abstain from deception, and practice honesty and equity in all matters relating to their profession." RCW 19.146.005. The legislature went further and made violations of the MBPA a *per se* CPA violation through RCW 19.146.100.

This Court should reject the Hoangs' attempt to circumvent the public interest declaration and *per se* establishment and further reject the petition for review for failure to demonstrate any of the criteria under RAP 13.4(b).

II. RESTATEMENT OF THE ISSUE

Did Division One, in an unpublished opinion, err in applying the Mortgage Broker Practices Act to the conduct of a licensed Loan Originator under the facts of this case such that review is warranted under RAP 13.4(b)? **No.**

III. STATEMENT OF THE CASE

A. Background Facts

Ms. Nguyen immigrated to the United States from Vietnam in August 2015 and has lived in Snohomish County for several years. Clerk's Papers ("CP") at 6: Finding of Fact ("FF") 1. Ms. Nguyen received limited education in Vietnam through the eleventh grade and has only minimal ability to speak English and cannot read documents in English. *Id.*; FF 2.

Ms. Hoang was previously licensed as a mortgage originator in Washington State, but her license was suspended in 2021 by the Washington State Department of Financial Institutions. *Id.*; FF 3; Ex 66. The charges provided that Ms. Hoang "fails to meet the requirements of RCW 31.04.247(1)(e) by failing to demonstrate character and general fitness such as to command the confidence of the community and to warrant belief that mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of the Act." *Id.*

Ms. Hoang and Ms. Nguyen met sometime prior to August 2019. *Id.* at 7; FF 4. Ms. Hoang learned that Ms. Nguyen was hoping to buy a house for herself and her son and that she had received a significant gift of funds from her father in order to do so. *Id.* Since Ms. Hoang was in the loan origination business and had experience acquiring real estate, she offered to assist Ms. Nguyen in purchasing a home. *Id.*; FF 5.

Ms. Hoang advised Ms. Nguyen that she should use part of her funds as a down payment on the home and should obtain a loan for the remaining balance. *Id.* On numerous occasions, Ms. Nguyen met Ms. Hoang at Ms. Hoang's office, where they discussed acquiring and financing a home. *Id*.; FF 6. Ms. Nguyen believed that Ms. Hoang was acting in her role as a loan originator. *Id.*

B. Lynnwood Home

Ms. Nguyen found a home that she liked in Lynnwood, Washington (the "Lynnwood Home"). *Id.*; FF 7. She showed Ms. Hoang the property and expressed interest in purchasing it. *Id.*

Ms. Hoang advised Ms. Nguyen that Ms. Nguyen did not have sufficient credit to secure a loan – despite the fact that Ms. Hoang never prepared an application or presented Ms. Nguyen's request to a traditional residential lender based on the large cash down payment that Ms. Nguyen had available. *Id.*; FF 8. Ms. Nguyen was unable to find a co-signer, and Ms. Hoang volunteered that her husband, Nhan Hoang, would be willing to co-sign a loan. *Id.*; FF 9.

The purchase price of the home was $603,000. *Id*; FF 10. Ms. Nguyen withdrew $15,000 and transferred the amount to the escrow company for the initial deposit. *Id*; FF 11. Ms. Nguyen subsequently wire transferred an additional $129,232.16 to the escrow company for the balance of funds needed to close the sale. *Id.* at 8; FF 12. At closing, "NB Capital Assets" was paid $4,824.00 as a loan origination fee; this fee was never disclosed to Ms. Nguyen. *Id.*; FF 13. "NB Capital Assets" is an alter-ego of Mr. and Ms. Hoang. *Id.*; FF 14. Ms. Hoang never gave any of the purchase and sale documents for the Lynnwood Home to

Ms. Nguyen, nor did she ever disclose that Mr. Hoang was not a co-signer but rather the sole purchaser. *Id*.; FF 15.

On or about November 21, 2019, the Lynnwood Home was transferred to Mr. Hoang, and Ms. Hoang provided a Quit Claim Deed to her husband, waiving any interest Ms. Hoang had in the Lynnwood Home. *Id.*; FF 16. All of the money for the down payment and the closing costs came from Ms. Nguyen for a property to which Mr. Hoang was the sole owner. *Id*; FF 17. The balance came from a hard money loan with an interest rate of 9.25% and monthly payments of $3,718.50 to cover interest only. *Id*; FF 18. The entire $482,400.00 matured on December 1, 2020. *Id.* After Ms. Nguyen moved into the Lynnwood Home, Ms. Hoang presented her with a Lease and Option Agreement and informed Ms. Nguyen that she was not an owner of the property. *Id*.; FF 19. The rent that Ms. Nguyen was required to pay was the exact amount as the monthly loan payments. *Id*. at 9; FF 20.

C. Everett Property

In late 2019 or early 2020, Ms. Hoang proposed that Ms. Nguyen use more of the money to purchase an investment property. *Id*.; FF 26. Ms. Hoang suggested Ms. Nguyen purchase a property located in Everett, WA (the "Everett Home"). *Id*. FF 27.

Ms. Hoang asked Ms. Nguyen to sign a Joint Venture Agreement ("JVA") for the Everett Home. *Id*.; FF 28. The terms of the JVA were unconscionable; for example, Ms. Nguyen, while funding the entire venture, was only given 15% interest. *Id*. at 9-10; FF 28-31.

On February 6, 2020, Ms. Hoang prepared and had Ms. Nguyen sign a withdrawal slip from Ms. Nguyen's bank for the amount of $150,000. *Id.* at 10; FF 32. $74,174.71 of this amount was used for the down payment on the Everett Home, but the remaining $75,825.29 of the funds were never accounted for. *Id.* at 11; FF 39-40. The remaining balance for the Everett Home was paid through a hard money loan with an interest rate

of 12%. *Id*. FF 42. Ms. Nguyen was the only "Borrower" for a five-month loan of $408,861.15 with no mentions of a guarantor, or any other person or entity responsible for that loan. *Id.*; FF 43.

D. Procedural History

In October 2020, Ms. Nguyen filed a lawsuit against the Hoangs on the basis of fraud, conversion, violation of the MBPA, violation of the CPA, and a constructive trust. CP at 47-57. The matter proceeded to a bench trial in December 2021-January 2022. Following the trial, the trial court made findings of fact and conclusions of law and entered judgment in favor of Ms. Nguyen against the Hoangs. CP at 5-17, 20.

Mr. Hoang and Ms. Hoang appealed the decision of the trial court. In an unpublished opinion filed on September 11, 2023 (the "Opinion"), the Court of Appeals affirmed the decision of the trial court and found that "[t]he trial court did not err in concluding the Hoang was a loan originator." Opinion at 9. The Court of Appeals also found that "[t]he trial court did not err in concluding that the Hoangs' actions violated the MBPA, and thus

the CPA." Opinion at 11. The Court of Appeals remanded the matter to the trial court for the limited task of correction of an undisputed $22 clerical error in the judgment amount. The Hoangs moved for reconsideration, which the Court of Appeals denied.

The Hoangs now seek review by this Court through their Petition for Review.

IV. REASONS TO DECLINE REVIEW

Review of the Court of Appeals opinion here is discretionary. Pursuant to RAP 13.4(b), this Court will only accept a petition for review if it meets one or more of the following criteria:

> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
> (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
> (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.

The Hoangs' petition for review meets none of the above criteria. No conflict exists between the unpublished Division One opinion and a decision of this Court or a published Division Two case. No question of constitutional law is presented. And, as evidenced by the unpublished nature of the Division One opinion, the Hoangs' petition for review does not present an issue of substantial public interest, especially where clarity already exists as to the scope of the MBPA.

A. No Conflict Exists Between the Unpublished Division One Opinion and a Published Decision of this Court.

In reaching its conclusion that the plain language of the MBPA does not require a plaintiff to "establish that the act or practice is injurious to the public interest" to support a *per se* violation of the CPA, the Court of Appeals relied on the plain language found in RCW 19.146.005 (declaring legislative finding that "brokering of residential real estate loans substantially affects the public interest") and RCW 19.146.100 (making a violation of the MBPA a *per se* violation of the CPA). The interpretation of both of these provisions by the Court of

Appeals is in line with the well-established principles of statutory interpretation for interpreting plain language, as such analysis begins not with tools of statutory interpretation but "with the plain language employed by the legislature." *Cent. Puget Sound Reg'l Transit Auth. v. Airport Inv. Co.*, 186 Wn.2d 336, 346, 376 P.3d 372 (2016). Where the language in a statute is unambiguous, courts "give effect to that language and that language alone because [courts] presume the legislature says what it means and means what it says." *Id*.

Contrary to the assertions by the Hoangs, the Division One Opinion did not depart from the rules of statutory interpretation regarding plain meaning set forth in *State of Washington Department of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 11, 43 P.3d 4, 10 (2002). The approach adopted by *Department of Ecology,* provides that "the plain meaning is still derived from what the Legislature has said in its enactments, but that meaning is discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent

about the provision in question." *Id.* (emphasis added). Stated another way, when determining the plain meaning of a statutory provision in the absence of ambiguity, courts look only to other related statutes to the extent such statutes "disclose legislative intent about the provision in question." Only where ambiguity exists after looking at the plain language does the court look to other canons of statutory construction. *Id.*

Here, the broader analysis as to overall legislative intent and legislative history, as found in *Nationscapital* and relied on by the Hoangs, is only reached if the applicable portion of the statute is found to be ambiguous. Here, the Hoangs attempt to apply broad canons of statutory interpretation to claim that the legislature did not mean what it said when it declared that any violation of the MBPA is a *per se* violation of the CPA under RCW 19.146.100 and in its definitions of "loan originator" and "borrower" under RCW 19.146.010. Because the legislature was clear in making violations of the MBPA *per se* violations of the CPA, the Hoangs' reliance on *Behnke v. Ahrens*, 172 Wn. App.

281, 294 P.3d 729 (2012), and *Burns v. McClinton*, 135 Wn. App. 285, 143 P.3d 630 (2006), is entirely misplaced as those claims were brought under the CPA, not the MBPA.

As to the Hoangs' assertion that the legislature did not intend for the definitions of "loan originator" and "borrower" under RCW 19.146.010 to extend to Ms. Hoang in the context of this case, the Hoangs' argument is premised on the preamble to the definition section of the MBPA, which provides that the definitions apply "unless the context clearly requires otherwise" (the "MBPA Preamble"). However, the Hoangs misinterpret this common statutory provision, claiming it requires an extra fact-based context exception by attempting to apply the intent and policy behind the CPA to interpret the meaning of a definitional provision, which disregards the rules of plain language interpretation set forth in *Department of Ecology* and its progeny.

Rather, courts look to similar provisions to ascertain meaning, and here, preambles to statutory definitions sections similar to the MBPA Preamble are common and relate to the

context found in the statutory provisions themselves—not relating to factual context that may exist when applying a definition. Some examples, not exhaustive by any means, of other statutes containing similar preambles are as follows: RCW 18.54.010 ("Unless the context clearly indicates otherwise, the terms used in this chapter take their meanings as follows:"); RCW 43.80.100 ("The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise."); RCW 50.22.010 ("As used in this chapter, unless the context clearly indicates otherwise:"); RCW 64.44.010 ("The words and phrases defined in this section shall have the following meanings when used in this chapter unless the context clearly indicates otherwise."); RCW 70.28.008 ("The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:"); RCW 79A.30.010 ("Unless the context clearly indicates otherwise, the definitions in this section apply throughout this chapter."); RCW 80.60.010 ("The definitions in

this section apply throughout this chapter unless the context clearly indicates otherwise.").

The above statutory preambles are substantially similar in affect when compared to the MBPA Preamble, which provides as follows: "[u]nless the context clearly requires otherwise, the definitions in this section apply throughout this chapter." RCW 19.146.010. Notwithstanding the presence of numerous statutes containing substantially similar preambles as to the MBPA Preamble, the Hoangs fail to cite to a single case interpreting an analogous statutory preamble provision to add an additional layer of contextual analysis when applying a statutory definition. The absence of such supporting authority for the Hoangs' interpretation has a simple explanation—the interpretation is wrong and does not fit the plain language used.

Turning to the plain language itself, the MBPA Preamble sets up a logical binary, by default the definitions contained in RCW 19.146.010 apply throughout the MBPA except where "the context clearly requires otherwise[.]" Put another way, a

definition either applies, or it does not. Examples of statutory context that clearly provide that certain MBPA definitions do not apply can be found in RCW 19.146.020, by which the legislature set forth numerous exclusions from the MBPA as a whole. One such example includes RCW 19.146.020(1)(c), which covers instances where an attorney may perform mortgage broker or loan originator services. Under the definitions found in RCW 19.146.010, attorneys providing services similar to those of mortgage brokers or loan originators may technically meet the statutory definitions, but the statutory context provided by the exclusions under RCW 19.146.020(1)(c) "clearly requires" that attorneys meeting the requirements in RCW 19.146.020(1)(c) are excluded from the applicability of the definitions found in RCW 19.146.010. Notably, the Hoangs do not anchor their context-based exclusion arguments in any of the statutory exclusions found in RCW 19.146.020. Accordingly, rejection of the Hoangs' arguments by the Court of Appeals in the Opinion was appropriate and in line with the published opinions of this Court.

B. No Conflict Exists Between the Division One Opinion and the Division Two Opinion, *Nationscapital*.

The Hoangs attempt to invoke the legislative intent behind the Washington Consumer Protection Act in arguing for a carve-out to the MBPA, which fails to follow the well-established rules of statutory construction. In arguing that the legislature did not mean what it said in RCW 19.146.005 and RCW 19.146.100 making a violation of the MBPA a *per se* CPA violation, Hoangs rely on RCW 19.86.090.

Yet *Nationscapital* does not support the interpretation argued by the Hoangs. *Nationscapital* arose out of findings of an administrative law judge concerning action brought by the Department of Financial Institutions ("DFI") against a lender.[1] In that case, Nationscapital argued that DFI conducted an overbroad investigation that included loan transactions that were not subject to any consumer complaints. In the Hoangs' attempt

[1] The standard of review in *Nationscapital* was based on deference to agency interpretations. *Nationscapital*, 133 Wn. App at 737-38.

to apply *Nationscapital* here, they conflate that court's analysis as to the scope of DFI's investigative powers with the applicability of the *per se* statutory provision within the MBPA.

In fact, *Nationscapital* actually supports Nguyen's position that MBPA violations properly trigger the CPA.

As stated *Nationscapital* in *dicta*:

> Nationscapital's construction of RCW 19.146.235 would not further the legislature's purpose of promoting honesty and fair dealing or preserving public confidence in the lending and real estate community. Under Nationscapital's interpretation, DFI would have to turn a blind eye to violations where no consumer specifically complained about them and address only those complaints brought by individual consumers. Such a narrow focus on individual complaints is contrary to the legislative declaration that the business of residential mortgage brokers affects the public interest and that violations of the Act implicate the CPA.[2]

When the legislature has enacted a *per se* violation of the Consumer Protection Act, as is the case here, there is no need for the Court to establish the "public interest" factor in when finding

[2] *Nationscapital,* 133 Wn. App. at 741 (emphasis added).

the *per se* violation of the MBPA has occurred, as it is self-executing.[3] The Opinion properly rejected the arguments as to a contextual exception to the MBPA through the CPA.

When analyzing the plain language of a statutory provision, the language in related statutes is referenced to the extent such statutes "disclose legislative intent about the provision in question." *Dep't of Ecology*, 146 Wn.2d at 11.

Here, the Hoangs' reliance on *Nationscapital Mortgage Corporation v. State Department of Financial Institutions* reveals that their argument uses canons of statutory interpretation for ambiguous provisions, rather than being based on proper application of the rules for statutory interpretation of

[3] "**Violations of chapter**—Application of consumer protection act. The legislature finds that the practices governed by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Any violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act or practice and unfair method of competition in the conduct of trade or commerce in violation of RCW 19.86.020. Remedies provided by chapter 19.86 RCW are cumulative and not exclusive." RCW 19.146.100.

unambiguous plain language. *See Nationscapital* 133 Wn. App. at 743. While legislative intent in surrounding statutes is used to interpret the plain meaning of words used, the Hoangs attempt to use this legislative intent to claim the legislature did not mean what it said and that violations of the MBPA are not always injurious to the public interest.

However, even if one were to look past all of the aforementioned legal infirmities in the Hoangs' interpretation of the MBPA Preamble, the Hoangs' interpretation ignores the very meaning, context—and exceptions—supplied within the definitions section itself. Take for example the definition of a "loan originator." RCW 19.146.010(11)(a) and (b) define circumstances where one would meet the definition of a loan originator, while RCW 19.146.010(11)(c), (d), and (e) define circumstances where one would not meet the definition of a loan originator. If the legislature had intended to add a friends or acquaintances exception for loan originators, as the Hoangs appear to argue for, the legislature clearly knew how to create

such exceptions and chose not to. As such, the Hoangs' legally erroneous interpretation of the MBPA Preamble was appropriately rejected by the Court of Appeals.

V. CONCLUSION

This Court should reject the Hoangs' attempt to circumvent the public interest declaration and *per se* establishment and further deny the petition for review for failure to demonstrate any of the criteria under RAP 13.4(b). No conflict exists between the unpublished Division One opinion and a decision of this Court or a published Division Two case. No question of constitutional law is presented. And, as evidenced by the unpublished nature of the Division One opinion, the Hoangs' petition for review does not present an issue of substantial public interest, especially where clarity already exists as to the scope of the MBPA.

The undersigned certifies that this brief contains 3,574 words, exclusive of words contained in any appendices, the title sheet, the table of contents, the table of authorities, the certificate of compliance, the certificate of service, signature blocks, and any

pictorial images. The word count was computed using the word count function in Microsoft Word.

RESPECTFULLY SUBMITTED this 17th day of January, 2024.

AHLERS, CRESSMAN, & SLEIGHT PLLC

By: */s/ Ryanne S. Mathisen*
/s/ Lawrence S. Glosser

Lawrence S. Glosser, WSBA #25098
Larry.Glosser@acslawyers.com
Ryanne S. Mathisen, WSBA #56000
Ryanne.Mathisen@acslawyers.com
1325 Fourth Avenue, Suite 1850
Seattle, WA 98101-2571
(206) 287-9900
Attorneys for Respondent Trang Huynh Nguyen

CERTIFICATE OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that on January 17, 2024, I caused to be served the foregoing document to the following parties stated below, via the Washington Courts E-Portal:

Randy Baker, WSBA #27421
600 N. 36th Street, Suite 406
Seattle, WA 98103
rpb@bakerappeal.com
Attorney for Appellants

DATED this 17th day of January, 2024, at Seattle, Washington.

s/Trang Nguyen
Trang Nguyen, *Legal Assistant*

AHLERS CRESSMAN & SLEIGHT PLLC

January 17, 2024 - 2:05 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	102,655-2
Appellate Court Case Title:	Trang Huynh Nguyen v. Becky Hoang, et ano.
Superior Court Case Number:	20-2-04888-5

The following documents have been uploaded:

- 1026552_Answer_Reply_20240117140444SC893782_0659.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  The Original File Name was 2024 01 17 Answer to Petition for Review.pdf

A copy of the uploaded files will be sent to:

- Larry.Glosser@acslawyers.com
- rpb@bakerappeal.com
- trang.nguyen@acslawyers.com

Comments:

Sender Name: Simone Torres - Email: sarah.king@acslawyers.com
Filing on Behalf of: Ryanne Selene Mathisen - Email: ryanne.mathisen@acslawyers.com (Alternate Email: auzree.hightower@acslawyers.com)

Address:
1325 4th Ave Suite 1850
SEATTLE, WA, 98101
Phone: (206) 287-9900

Note: The Filing Id is 20240117140444SC893782