NO. 94239-1

SUPREME COURT OF
THE STATE OF WASHINGTON

NO. 74266-3-I

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION 1

GLOGOWSKI LAW FIRM, PLLC

Plaintiff/Petitioner,

v.

CITY FIRST MORTGAGE SERVICES, LLC

Defendant/Respondent,

CITY FIRST MORTGAGE SERVICES, LLC'S RESPONSE TO GLOGOWSKI LAW FIRM, PLLC'S PETITION FOR REVIEW

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I. INTRODUCTION

Respondent City First Mortgage Services, LLC ("City First") respectfully submits the following Response to the Glogowski Law Firm, PLLC's ("GLF") Petition for Review ("Petition"). City First is not seeking review of any portion of the Court of Appeals decision in *Glogowski Law Firm, PLLC v. City First Mortgage Services, LLC*, No. 74266-3-I, ---P.3d ---, 2017 WL 478305 (Wash. App. Feb. 6, 2017).

This case is a malpractice action against GLF for its representation of City First in *Collings v. City First Mortg. Services, LLC*,[1] (hereinafter "the Underlying Case"). In the Underlying Case, City First was found vicariously liable to Beth and Donald Collings for the actions of City First agents, Paul Loveless and Andrew Mullen. In the present action, City First alleged that GLF breached its duty to City First and as a result committed malpractice that caused City First to suffer the adverse judgment in the Underlying Case.

Legal causation was the germane issue on appeal in the present action. In a legal malpractice action, "the but for aspect of proximate cause is decided by the trier of fact." *Clark Cnty. Fire Dist. No. 5 v. Bullivant Houser Bailey P.C.*, 180 Wn. App. 689, 707, 324 P.3d 743 (2014) (citing *Smith v. Preston Gates Ellis, LLP*, 135 Wn. App. 859, 147 P.3d 600 (2006)).

[1] 177 Wn. App. 908, 317 P.3d 1047 (2013).

"However, proximate cause can be determined as a matter of law if reasonable minds could not differ." *Id.* (*accord* A-5) The Court of Appeals strictly adhered to Washington case law in reversing and remanding the trial court's determination because "Ms. Glogowski's failure to assert the federal exemption from the CSOA may have been the proximate cause of at least some damages incurred by City First." A-10. This decision correctly applied the law and there is no conflict between the Court of Appeals' decision and *Daugert v. Pappas*[2] or *Smith v. Preston Gates Ellis, LLP*. This case does not make any substantive changes to the law of malpractice as the facts demonstrating liability and causation are clear.

II. STATEMENT OF THE CASE

A. The Underlying Case.

In 2006, Beth Collings contacted City First, a small FHA, HUD, and VA approved mortgage loan company located in Utah, in an attempt to refinance her family's home. CP at 1374-75 and CP at 1097-98. Soon after learning they did not qualify for a loan through City First, the Collingses were introduced to Robert Loveless ("Loveless"), a City First branch manager also in Utah and Andrew Mullen ("Mullen"), another branch manager and loan officer with City First. CP at 1374-75. Mr. Loveless offered, in his personal capacity, to obtain a loan to purchase the Collingses'

[2] 104 Wn.2d 254, 704 P.2d 600 (1985).

property and, further, to lease it back to them through his independent business, Home Front Holdings, LLC ("Home Front"). CP at 1374-1410. Under Loveless' plan, Home Front would also be the landlord, and "all payments [were to be] addressed to Home Front Holdings, LLC." CP at 1385-1410.

In May 2006, the Collingses and Loveless executed a purchase and sale agreement and other documents, all of which listed "Robert Loveless" or "Robert P. Loveless, a married man, as his separate estate" as buyer. CP at 1377-84. City First was not a party to the purchase and sale agreement. CP at 1377-84. The Collingses and Loveless also executed a written lease that identified Home Front as the landlord. CP at 1385-1410. City First was not a party to the lease. CP at 1385-1410.

By April 2008, Loveless defaulted on his loan, which resulted in one or more lenders foreclosing on the underlying deed(s) of trust. CP at 1374-75. On March 19, 2009, the Collingses filed the Underlying Case captioned *Collings v. City First Mortgage Services*, Superior Court, King County, Case No. 09-2-13062-1 SEA "to enjoin the trustee sale scheduled by First American." CP at 1481-93. The Collingses sued City First, Loveless, Mullen, Gavin Spencer and other parties who were later dismissed. CP at 1481-93. Loveless – the primary individual in this transaction – never

appeared in this action and the Collingses obtained a default judgment against him. CP at 1452-1458.

On September 13, 2010, through September 20, 2010, City First appeared for trial. The jury returned a verdict in the Collingses' favor. CP at 1470-74. The verdict held Loveless and City First liable for $40,311 in compensatory damages and $80,622 in punitive damages under the Washington Credit Services Organizations Act ("CSOA"), chapter 19.134 RCW. CP at 1473. After trial, the Collingses moved for an award of attorney fees against City First owing to their status as the 'prevailing party' under the Consumer Protection Act (RCW 19.86 et seq.) ("CPA"), and the Credit Services Organization Act (RCW 19.134 et seq .). *See Collings v. City First Mortg. Services, LLC*, 177 Wn. App. 908, 927, 317 P.3d 1047 (2013). The Collingses further asked that the fee award be enhanced by a factor of 1.2. *Id.* The trial court granted the request, awarding a total of $628,564.20 in attorneys' fees and $42,307.41 in costs which was affirmed by the Division One Court of Appeals. *Id.* 177 Wn. 2d at 927-929. A judgment was eventually entered against City First to include the damages awards, costs and attorneys' fees. CP at 1741-44.

Ms. Glogowski knew that City First was exempt from the CSOA yet she never raised the issue of exemption at any time during the Underlying Case. CP at 28-51 and CP at 1026-33.

Ms. Glogowski also failed to object to instruction No. 19 which related to the CSOA, chapter 19.134 RCW. CP at 1157. City First was held liable under the CSOA, which by definition does not apply to it. CP at 1470-74. Ms. Glogowski accepted an instruction that failed to include the key portions of the statute which explicitly exempted City First from liability under the CSOA. CP at 1126.

Instruction No. 19 changed the scope of the language in RCW 19.134.020(2)(b)(i) by adding the "each branch" language to the statute and did not include the applicable exceptions listed under RCW 19.134.020(2)(b) which unequivocally applied to City First. CP 1126. When City First later appealed based on this exemption, the Court of Appeals rejected all of its arguments because "City First did not take exception to instruction 19." *Collings*, 177 Wn. App. at 913.

The jury was instructed that it could find City First liable under the CSOA, the CPA (through the equity skimming act, CSOA and the CLA) and for civil conspiracy. CP at 1125-55 and CP at 1470-74. Again, the Court of Appeals rejected City First's appellate arguments in part because Ms. Glogowski had failed to propose a special verdict form. *Collings v. City First Mortg. Services, LLC*, 177 Wn. App. 908, 924-25 317 P.3d 1047 (2013). Additionally, the appellate court held the verdict stood because at least ***one*** of the Collingses' theories was supported by the evidence. *Id.*

With regards to the CSOA exemption that GLF failed to set forth in the Underlying Case: since at least September 25, 1997, City First has held and continuously maintained a license with the Federal Housing Administration (the "FHA"). CP at 1098. City First is directly supervised by a federal regulator, that is, HUD. CP at 1098. Thus, it is an approved HUD, VA and FHA lender. CP at 1098.

Notably, Robert Loveless and Andrew Mullen were HUD, VA and FHA approved lenders as licensees of City First. CP at 1098. They were also licensed mortgage brokers under City First's license. CP at 1098.

B. The Malpractice Action

GLF brought a complaint against City First for breach of contract, claiming she was owed $54,268.83 for unpaid legal services. CP 1-10. City First filed an Answer, Affirmative Defenses, and Counterclaim wherein it asserted numerous affirmative defenses and a claim for professional negligence. CP 11-16. Among other things, City First pled, "[b]ut for Glogowski's actions and/or omissions, City First would have prevailed in the *Collings v. City First* action or at least achieved a better result had Glogowski not been negligent and/or committed malpractice." CP at 14. Additionally, City First alleged that "[a]s a result of Glogowski's acts and/or omissions, City First suffered damages in an amount to be proven at trial." CP at 14.

City First hired Jeffry Downer to opine on whether Ms. Glogowski violated the standard of care of a reasonable, prudent attorney in the State of Washington in relation to her representation of City First in the underlying matter. CP at 954. Mr. Downer opined that Ms. Glogowski, *inter alia*, failed to submit jury instructions that reflected applicable law. CP at 957-979.

GLF filed a summary judgment motion arguing that the trial court should summarily dismiss City First's claim for professional negligence arguing (1) City First could not prove that Ms. Glogowski's conduct proximately caused the adverse verdict in the underlying case and (2) City First's allegations of attorney malpractice fall under the scope of the attorney judgment rule. CP 28-51. After a hearing on June 5, 2015, the trial court denied Ms. Glogowski's motion for summary judgment. CP 1020-1023.

Thereafter, GLF filed a Motion for Reconsideration arguing that the court's role was to make its own determination regarding the sufficiency of the evidence on causation in fact and legal causation and the evidence presented by City First failed to rise to the level of fact and specificity to prevent summary judgment. CP 1026-1033. Despite a response to the contrary, (CP 1072-1082), the trial court agreed with Glogowski, simply stating, "Counterclaim Plaintiff City First Mortgage Services, LLC's claims

against [Glogowski Law Firm, PLLC] are dismissed with prejudice." CP 1093-1094. City First then filed a Motion for Reconsideration regarding the order dismissing its claim, (CP at 1767-1782), which was denied by the trial Court. CP at 1193. City First resolved its claim with Katrina Glogowski in regards to her breach of contract claim and the parties filed a Stipulation and Proposed Order for Voluntary Dismissal on October 13, 2015. CP at 1197-1200. City First timely appealed. CP at 1201-1206. After briefing and oral argument, the Court of Appeals reversed the trial court's decision and remanded the case. See Appendix.

III. ARGUMENT WHY REVIEW SHOULD NOT BE ACCEPTED

A. The Court of Appeals' Decision does not Conflict with the Supreme Court's Decision in *Daugert v. Pappas* nor does it Conflict with the Court of Appeals' Decision in *Smith v. Preston Ellis Gates, LLP.*

Daugert v. Pappas has little, if any, application to the present case. *Pappas* correctly reasoned in dictum that "[i]n most instances the question of cause in fact is for the jury. It is only when the facts are undisputed and inferences therefrom are plain and incapable of reasonable doubt or difference of opinion that this court has held it becomes a question of law for the court." 104 Wn.2d 254, 257, 704 P.2d 600 (1985). However, *Pappas* involved "a legal malpractice claim against an attorney for failure to file timely a petition for review[.]" *Id.* 104 Wn.2d at 255. The Court held that

in this specific circumstance causation is to be determined by the trial judge because the questions of causation in such a case require substantive legal analysis. *Id.* 104 Wn.2d at 258; 263. Specifically, the trial judge must determine whether "an appellate court would have (1) granted review, and (2) rendered a judgment more favorable to the [appellant]." *Id.* 104 Wn.2d at 258. No such issue is present in this case since GLF did not represent City First in the appeal of the Underlying Case. Rather, the determination of the alleged malpractice against GLF is solely the province of the jury.

The Petitioner further argues that the Court of Appeals decision cannot be reconciled with *Smith v. Preston Gates Ellis, LLP* because the decision "entered into the realm of speculation by holding that, had [GLF] asserted the defense of exemption to the CSOA based on City First's status as a federally licensed home lender, despite having already asserted the same exemption defense based on state licensure, 'the outcome of the Collings case may have been different.'" Pet. Rev. at 9 (citing A-10). This statement ignores GLF's failure to set forth the portion of the statute that provided for City First's exemption. A-7-9. It also fails to properly distinguish the present matter from *Smith*. In *Smith*, a case regarding an attorney's review and advice prior to entering into a contract and not litigation, "[t]he only clear evidence of causation came from the declaration of" the plaintiff's expert witness. 135 Wn. App. 859, 865, 147 P.3d 600

(2006). The court did not even consider the expert's causation testimony as the trial court struck this "testimony as outside [plaintiff's expert's] disclosed area of expertise. *Id.*

There is no need for speculation as to how GLF's failed representation caused the judgment against City First. In the Underlying Case City First was held liable under the CSOA, which by definition does not apply to it. CP 1470-74. In order to be held liable under the CSOA, the entity or person must meet the definition of a "Credit Services Organization." RCW 19.134.010(2)(a). The CSOA prohibits "Credit Services Organizations" from engaging in certain conduct. RCW 19.134.020. Additionally, the CSOA excludes certain persons from liability under this statute. RCW 19.134.010 states that a "'Credit services organization' ***does not include***:"

> Any person authorized to make loans or extensions of credit under the laws of this state or the United States who is subject to regulation and supervision by this state or the United States ***or a lender approved by the United States secretary of housing and urban development*** for participation in any mortgage insurance program under the national housing act;

(emphasis added).

Ms. Glogowski did not propose an instruction that included the above emphasized portions of the statute which explicitly exempt City First from liability under the CSOA. CP 1167. Additionally, Ms. Glogowski

failed to properly object to instruction No. 19, which covered the CSOA. CP 1157-58. Instruction No. 19 changed the scope of the language in RCW 19.134.020(2)(b)(i) by eliminating the applicable exceptions and adding the "each branch" language. CP 1126. Regardless of City First's license status in the state of Washington and any arguments related thereto, it is and has always been exempt under the statute as a HUD lender.

As the Petitioner points out, GLF "asserted that City First was exempt from the CSOA because City First was a fully licensed consumer loan company in Washington." Pet. Rev. at 2; 9. However, the Petitioner fails to explain that in the appeal of the Underlying Case the Court of Appeals reasoned that "as Collings argues, the Department's regulations support the 'each branch' interpretation of the statute provided by instruction 19." *Collings*, 177 Wn. App. at 913.

The Petitioner is correct when it states, "The statutory basis for the exemption defense is identical, whether asserted based on state or federal licensure." Pet. Rev. at 9. Unfortunately, GLF allowed the portion of the statute related to federal licensure to be omitted from Jury Instruction 19 and failed to object to this omission. CP 1167; 1126. The Court of Appeals recognized in this matter that "[c]onsequently, this instruction did not mention that an entity may be exempt if it is authorized to make loans under

federal law. And, the Court of Appeals [in the Underlying Case] had no reason to consider a federal law exemption in its opinion." A-8.

The CSOA does not apply to City First as a matter of law. As provided above, the definition of a "credit services organization" explicitly ***excludes*** "a lender approved by the United States secretary of housing and urban development for participation in any mortgage insurance program under the national housing act [.]" RCW 19.134.010(2)(b)(i). In other words, under this provision, persons who are authorized to make loans or extensions of credit under federal law are explicitly exempt from liability under the CSOA. Since at least September 25, 1997, City First has held and continuously maintained a license with the FHA. CP 1098. City First is directly supervised by a federal regulator, that is, HUD. CP 1098. Thus, City First is an approved HUD, VA and FHA lender. CP 1098. City First licensees, i.e. Mullen and Loveless are also directly supervised by HUD. CP 1098. These facts are not in dispute. Thus, City First, Mullen and Loveless are exempt under the CSOA as a matter of law.[3]

[3] The Petitioner cites to *Piris v. Kitching* to demonstrate that the Supreme Court has heard cases on legal malpractice. *Piris* has no application to this case as it involved legal malpractice in the criminal context. 185 Wn.2d 856, 861-62, 375 P.3d 627 (2016) ("A plaintiff also bears the burden of proving two additional elements concerning proximate cause when alleging *criminal* malpractice. First, as a prerequisite, the plaintiff must have obtained postconviction relief. Second, the plaintiff must prove actual innocence of the underlying criminal charge by a preponderance of the evidence.") (emphasis in original).

B. GLF Failed to Properly Defend City First Under the Independent Contractor Theory.

The Petitioner inexplicably argues that in order for GLF to have properly dealt with the possibility that City First could be found vicariously liable for the conduct of Loveless or Mullen she would have had to make a counterfactual argument. Pet. Rev. 11-12. This argument ignores the basic reality of asserting the defense that Loveless and Mullen were independent contractors. Namely, that if the independent contractor argument is successful than City First would not have been held vicariously liable for the acts of Loveless and Mullen. However, if the independent contractor argument was unsuccessful than City First would be held vicariously liable for the acts of Loveless and Mullen.

It is not a counterfactual argument to be prepared for a defense to fall through. Rather, since GLF's client, City First, was exempt under the CSOA it was an essential aspect of the defense. City First should never have been found liable for the conduct of Loveless and Mullen. If the jury had determined that Loveless and Mullen were independent contractors City First would not have been liable. If the CSOA exemption had been properly raised then a finding of vicarious liability would have resulted in City First enjoying exemption. If Loveless and Mullen were found to have acted outside the scope of their authority then City First could not be held liable.

The failure to properly defend City First on the basis of its exemption from the CSOA caused the adverse judgment against City First.

The Court of Appeals opinion never states that GLF should have changed her argument so that it did not match up with the facts. GLF should have argued that if City First was found to be vicariously liable that it was exempt. Also, GLF should have been prepared for the possibility that City First could be found vicariously liable since Loveless and Mullen operated out of a City First branch as City First branch managers and both had communicated with the Collingses using City First email addresses. CP 1386. GLF cannot argue that the failure to properly defend City First on the basis of its exemption from the CSOA was part of a strategy.[4]

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[4] In discussing GLF's failure to properly raise City First's exemption from the CSOA, the petitioner refers to the "attorney judgment rule." Petitioner cannot make a serious argument that the failure to properly set forth an absolute defense available to City First was a professional judgment decision.

IV. CONCLUSION

The Court of Appeals correctly interpreted and applied Washington law on causation in a malpractice action. In so doing it reached the correct conclusion that a jury should decide the causation issue in this matter. The decision does not conflict with *Daugert v. Pappas* or *Smith v. Preston Gates Ellis, LLP* and the law of malpractice in Washington would not be developed further by the Supreme Court reviewing this case.

Dated this 7th day of April, 2017.

Respectfully submitted,

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APPENDIX - A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

GLOGOWSKI LAW FIRM, PLLC, Respondent, v. CITY FIRST MORTGAGE SERVICES, LLC, Appellant.	No. 74266-3-I DIVISION ONE UNPUBLISHED OPINION FILED: February 6, 2017

APPELWICK, J. — Glogowski sued City First for its legal fees, and City First counterclaimed for legal malpractice. The trial court dismissed the legal malpractice claim on summary judgment. We reverse and remand for trial.

FACTS

Glogowski Law Firm PLLC sued City First Mortgage Services LLC for breach of contract after City First failed to pay Glogowski for legal services. City First hired Glogowski to defend it in a lawsuit brought by Donald and Beth Collings. Katrina Glogowski was the attorney primarily responsible for the case.[1]

The Collingses contacted City First after receiving a flier advertising a program for people with credit problems. Collings v. City First Mortg. Servs., LLC, 177 Wn. App. 908, 914, 317 P.3d 1047 (2013). The Collingses were concerned

[1] For clarity, we refer to Glogowski Law Firm PLLC as Glogowski, and Katrina Glogowski, the attorney who handled the Collings case, as Ms. Glogowski.

about falling behind in their payments on their home. Id. Beth Collings first spoke with Gavin Spencer, an employee at a City First Branch in Utah, who assisted her in applying for a loan over the phone. Id. Spencer informed the Collingses that the loan had not been approved, but suggested that his manager might be able to help them. Id.

Spencer introduced the Collingses to Paul Loveless and Andrew Mullen, City First branch managers. Id. Loveless suggested a plan: he would buy the Collingses' home for its appraised value, take out a mortgage on the home, and lease it back to them. Id. at 915. The Collingses agreed, on the condition that the lease would prohibit Loveless from refinancing the home and encumbering it with a home equity line of credit. Id. In accordance with the agreement, Loveless took title to the home and executed a mortgage with City First. Id.

Two years later, the Collingses discovered that Loveless had refinanced the loan with City First and taken out a home equity line of credit. Id. Loveless had failed to make payments, and a foreclosure action had commenced. Id. at 915-16. Once the Collingses learned of the foreclosure action, they stopped making lease payments to Loveless. Id. at 915.

The Collingses sued City First, Loveless, Mullen, and Spencer in March 2009. Id. They alleged equity skimming, a civil conspiracy, usury, and violations of the Residential Landlord-Tenant Act of 1973,[2] the Credit Services Organizations

[2] Chapter 59.18 RCW.

Act (CSOA),[3] and the Consumer Protection Act.[4] They sought damages and injunctive relief.

Loveless defaulted. Collings, 177 Wn. App. at 916. It was undisputed that his scheme constituted illegal equity skimming. Id. After a trial, the jury found that Loveless, Mullen, and City First were liable to the Collingses. Id. It determined that Loveless and City First were liable for $40,311 in compensatory damages and imposed $80,622 in punitive damages against the two under the CSOA. Id. It also imposed $8,000 in punitive damages against Mullen.[5] Id. The court entered judgment against City First in the amount of $120,933. CP 1476-77.

City First appealed. Id. at 917. It argued that there was insufficient evidence of its liability on all of the Collingses' claims. Id. at 923. This court concluded that because City First did not propose a special verdict form to clarify the basis for the jury's verdict, the verdict would stand so long as at least one of the Collingses' claims was supported by the evidence. Id. at 925. It held that there was sufficient evidence to support City First's vicarious liability for Loveless, who defaulted on all of the claims. Id.

Glogowski filed the instant suit due to City First's failure to pay for the legal services rendered in Collings. City First asserted a counterclaim for legal

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[3] Chapter 19.134 RCW.

[4] Chapter 19.86 RCW.

[5] The jury verdict form required the jury to answer a number of questions about liability and damages. The jury found that Loveless and Mullen were liable to the Collingses on their claims. It found that City First was liable for the acts of Loveless, Mullen, and Spencer. It also determined that City First was "independently liable to the Collingses for their claims." The jury also specifically found that Loveless, Mullen, and City First were liable to the Collingses for violating the CSOA.

malpractice. Glogowski moved for summary judgment on the counterclaim. It argued that City First could not prove that Ms. Glogowski's conduct proximately caused the adverse verdict in the Collings case.

The court originally denied Glogowski's motion for summary judgment. Glogowski filed a motion for reconsideration, providing additional authority on the propriety of deciding proximate cause on summary judgment. The trial court granted this motion. It denied City First's subsequent motion for reconsideration. City First appeals.

DISCUSSION

City First asserts that the trial court erred in dismissing its legal malpractice claim. It argues that it created genuine issues of material fact on the issue of proximate cause that preclude summary judgment. City First contends that an issue remains as to whether, had Ms. Glogowski raised exemption from the CSOA or the Consumer Loan Act (CLA) as a defense, the jury would have imposed punitive damages.

This court reviews a summary judgment order de novo. Loeffelholz v. Univ. of Wash., 175 Wn.2d 264, 271, 285 P.3d 854 (2012). The court reviews the evidence in the light most favorable to the nonmoving party and draws all reasonable inferences in that party's favor. Klinke v. Famous Recipe Fried Chicken, Inc., 94 Wn.2d 255, 256, 616 P.2d 644 (1980). Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Jones v. Allstate Ins. Co., 146 Wn.2d 291, 300-01, 45 P.3d 1068 (2002). A material fact is one upon which the outcome

of the litigation depends, either in whole or in part. VersusLaw, Inc. v. Stoel Rives, LLP, 127 Wn. App. 309, 319, 111 P.3d 866 (2005). The court should grant summary judgment when reasonable minds could reach only one conclusion. Id.

There are four elements of a legal malpractice claim: (1) an attorney-client relationship existed, (2) the lawyer had a duty, (3) the lawyer failed to perform the duty, and (4) the lawyer's negligence was a proximate cause of the damage to the client. Halvorsen v. Ferguson, 46 Wn. App. 708, 711-12, 735 P.2d 675 (1986). Attorneys have a duty to exercise the degree of care, skill, diligence, and knowledge commonly possessed and exercised by a reasonable, careful, and prudent lawyer practicing in this jurisdiction. Id. at 712.

Proximate cause requires there to be a nexus between the attorney's breach of duty and the resulting injury. Estep v. Hamilton, 148 Wn. App. 246, 256, 201 P.3d 331 (2008). To establish proximate cause, the client must prove that, but for the attorney's negligence, he or she would have prevailed or at least would have achieved a better result. Halvorsen, 46 Wn. App. at 719. Generally, proximate cause is a question for the jury. Smith v. Preston Gates Ellis, LLP, 135 Wn. App. 859, 864, 147 P.3d 600 (2006). But, the court can decide proximate cause as a matter of law if reasonable minds could not differ. Id.

City First argues that the trial court erred in dismissing its legal malpractice claim based on proximate cause. City First argues that Ms. Glogowski failed to raise defenses under the CSOA and CLA, which would have exempted City First from liability. Therefore, the question before us is whether City First could have

received a more favorable outcome if Ms. Glogowski had raised one of these defenses.

Among other things, the CSOA prohibits those who attempt to assist borrowers in preventing or delaying foreclosure from making untrue or misleading representations. RCW 19.134.020, .010(2). It defines a "credit services organization" as

> [A]ny person who, with respect to the extension of credit by others, sells, provides, performs, or represents that he or she can or will sell, provide, or perform, in return for the payment of money or other valuable consideration any of the following services:
>
> (i) Improving, saving, or preserving a buyer's credit record, history, or rating;
>
> (ii) Obtaining an extension of credit for a buyer;
>
> (iii) Stopping, preventing, or delaying the foreclosure of a deed of trust, mortgage, or other security agreement; or
>
> (iv) Providing advice or assistance to a buyer with regard to [any of the above].

RCW 19.134.010(2)(a). The CSOA also specifies what a credit services organization does not include. RCW 19.134.010(2)(b). At issue here is the exemption of,

> Any person authorized to make loans or extensions of credit under the laws of this state or the United States who is subject to regulation and supervision by this state or the United States or a lender approved by the United States secretary of housing and urban development for participation in any mortgage insurance program under the national housing act.

RCW 19.134.010(2)(b)(i).

City First asserts that it is exempt from the CSOA due to this provision, and therefore it should not have been subject to the Collingses' CSOA claim. City First

contends this is so, because City First has held and continuously maintained a license from the Federal Housing Authority (FHA) since at least 1997. And, City First is directly supervised by a federal regulator: the United States Department of Housing and Urban Development (HUD). City First asserts that as its licensees, Loveless and Mullen are also supervised by HUD, and therefore exempt as well.

At the underlying trial, in City First's motion for judgment as a matter of law, Ms. Glogowski argued that City First was exempt from the CSOA. But, she limited her argument to the exemption for " 'any person authorized to make loans or extensions of credit under the laws of this state.' " (Quoting RCW 19.134.010(2)(b)(i)). She quoted this portion of RCW 19.134.010(2)(b)(i), arguing that because City First is licensed by the Department of Financial Institutions (DFI) as a consumer loan company, it is exempt from the CSOA. On appeal, the Collings court rejected that argument. See 177 Wn. App. at 929-30. It determined that DFI regulations indicate that every branch must be licensed in the state to be authorized to make loans or extensions of credit under the laws of Washington. See id. at 930. The City First branch at issue was not licensed in the state. Id.

No mention was made in the trial motion to the language that immediately follows in RCW 19.134.010(2)(b)(i): "or the United States who is subject to regulation and supervision by this state or the United States or a lender approved by the United States secretary of housing and urban development for participation in any mortgage insurance program under the national housing act." This language creates an exemption for entities that are authorized to make loans and extensions of credit under federal law and are regulated by a federal entity. Yet,

Ms. Glogowski did not argue that City First was entitled to this exemption. Nor did she specifically object to jury instruction 19, which summarized the CSOA exemption as, "A 'credit services organization' does not include a person or entity authorized to make loans under the laws of the state of Washington."[6] Consequently, this instruction did not mention that an entity may be exempt if it is authorized to make loans under federal law. And, the Court of Appeals had no reason to consider a federal law exemption in its opinion.

In the malpractice action, City First produced a declaration of Brian Hunt as support for an exemption based on regulation at the federal level. Hunt is general counsel for City First. He stated that the information in his declaration was based on his own personal knowledge. This declaration states that City First has been continuously licensed by the FHA since 1997. And, City First is directly supervised by HUD, so it is an approved HUD and FHA lender. It also states that City First is a licensed mortgage broker. And, it provides that Loveless and Mullen were HUD and FHA approved lenders as licensees of City First.[7] While not conclusive, these statements create a genuine issue of material fact on City First's status under the CSOA.

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[6] Ms. Glogowski generally objected to a list of the Collingses' proposed jury instructions, including instruction 19. But, she did not provide any grounds for the objection. CR 51(f) requires counsel to "state distinctly the matter to which counsel objects and the grounds of counsel's objection" to a particular jury instruction. Where counsel does not clarify the reasons for the objection, a reviewing court will not consider the objection. Walker v. State, 121 Wn.2d 214, 217, 848 P.2d 721 (1993). Indeed, this court determined that City First did not take exception to instruction 19. Collings, 177 Wn. App. at 930.

[7] Unlike the other statements in Hunt's declaration, this comment is a legal conclusion. Thus, we do not consider this portion of the declaration in our analysis.

Glogowski argues that even if Ms. Glogowski had raised the exemption defense, the outcome would not have changed, because City First was found vicariously liable for the acts of Loveless and Mullen. It contends that because individuals are not federally regulated, Loveless and Mullen could not have asserted the exemption defense themselves. Consequently, City First would have still been found vicariously liable for Loveless's and Mullen's CSOA violations.

But, a corporation necessarily acts through its officers, directors, employees, and other agents. Diaz v. Wash. State Migrant Council, 165 Wn. App. 59, 76, 265 P.3d 956 (2011). Where a corporation's agents act within the scope of their authority, their actions are the actions of the corporation. Mauch v. Kizzling, 56 Wn. App. 312, 316, 783 P.2d 601 (1989). The only potential agents of City First who were found liable under the CSOA were Loveless and Mullen. Therefore, had Ms. Glogowski raised this defense, she would have had to argue that Loveless and Mullen were acting within the scope of their authority and therefore their actions were actually those of City First itself. Under this legal theory, City First, Loveless, and Mullen could have been determined to be exempt from the CSOA. Or, if Loveless and Mullen were found not to be agents of City First acting in the scope of their authority, they might still have been found liable under the CSOA. But, the determination of vicarious liability made in the Collings case would not control, because the question for the jury would have changed if City First was exempt. The outcome would not necessarily have been the same.

Viewing Hunt's declaration in the light most favorable to City First, we conclude that a genuine issue of material fact exists as to whether City First is

exempt from the CSOA. If Ms. Glogowski had raised the issue of exemption as a federally licensed and regulated lender, the outcome of the Collings case may have been different. The jury awarded $80,622 in punitive damages under the CSOA. Punitive damages were not available under any other statute or theory at issue. Had City First been exempt from the CSOA, the jury would not have been able to award these punitive damages.[8] Ms. Glogowski's failure to assert the federal exemption from the CSOA may have been the proximate cause of at least some damages incurred by City First. Therefore, the trial court erred in granting summary judgment in favor of Glogowski.[9]

We reverse and remand for proceedings consistent with this opinion.

WE CONCUR:

[8] For purposes of this appeal, we need not and do not address whether the CSOA exemption would preclude any liability for City First.

[9] Given the conclusion that City First's argument relating to the CSOA should have barred summary judgment, we need not address City First's argument relating to the CLA.

COURT OF APPEALS
THE STATE OF WASHINGTON
DIVISION I

GLOGOWSKI LAW FIRM, PLLC , Plaintiff/Petitioner, v. CITY FIRST MORTGAGE SERVICES, LLC, Defendant/Respondent.	Supreme Court No. 94239-1 Court of Appeals No. 74266-3-I **CERTIFICATE OF SERVICE**

I, Jennifer Bates, paralegal for BADGLEY MULLINS TURNER PLLC, attorneys for Appellant in the above entitled action, hereby certify under penalty of perjury that I am over the age of eighteen (18), and am competent to testify to the facts contained herein. On the 7th day of April, 2017, I served by sending a true and correct copy in the manner indicated below of the following documents:

1. **CITY FIRST MORTGAGE SERVICES, LLC'S RESPONSE TO GLOGOWSKI LAW FIRM, PLLC'S PETITION FOR REVIEW**

upon the attorneys of record herein, as follows, to wit:

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Attorneys for Petitioner

SIGNED at Seattle, Washington this 7th day of April, 2017.

BADGLEY MULLINS TURNER PLLC

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