Supreme Court No. 96025-9

Court of Appeals No. 76146-3-1

SUPREME COURT OF THE STATE OF WASHINGTON

BRIAN & KAREN HANDLIN,

Respondents,

v.

ON-SITE MANAGER, INC.,

Appellant.

ANSWER TO PETITION FOR DISCRETIONARY REVIEW

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I. INTRODUCTION

Brian and Karen Handlin respectfully ask the Court to deny the Petition for Discretionary Review. The Petition fails to meet the criteria for review under RAP 13.4(b), the decision of the Court of Appeals does not conflict with the primary cases identified by appellant, and the Court of Appeals correctly ruled on the two claims identified by appellant.

II. COUNTER-STATEMENT OF THE CASE

Washington's Fair Credit Reporting Act (WFCRA) provides that a prospective tenant whose rental application has been denied by a landlord can obtain a copy of the tenant-screening report used by the landlord to consider the application. *See* RCW 19.182.070. In this case, Brian and Karen Handlin (the Handlins) requested copies of their tenant-screening report after denial of their application by Forestview—a rental property—and subsequently disputed the report's accuracy and completeness.[1]

On-Site Manager, Inc. (On-Site), a consumer reporting agency that makes over 30,000 tenant screening reports per year in Washington, prepared the Handlins' joint tenant-screening report.[2] On-Site provided an incomplete report, omitted information from it, failed to make post-reinvestigation disclosures, and failed to provide the Washington-specific

[1] CP at 478-479, CP at 286, CP 273, CP 478 ¶1-6.
[2] CP at 397:19 – CP 398:7.

WFCRA rights and remedies statement to the Handlins, all in violation of RCW 19.182.070 and RCW 19.182.090.[3]

The Handlins filed this case under the WFCRA, RCW 19.182 et seq., and the Consumer Protection Act, RCW 19.86 et seq., seeking to enjoin On-Site from continuing to violate the WFCRA, and to recover damages.[4] One claim rests on On-Site's failure to make "post-reinvestigation" disclosures, after the Handlins' disputed information on August 5, 2013.[5] Four additional claims are based on On-Site's disclosure deficiencies on a tenant-screening report released on August 27, 2013.[6] On-Site initially successfully moved to dismiss but the Handlins appealed and, on May 26, 2015, the Court of Appeals held that On-Site's actions had caused the Handlins an "injury to property" because they have a right to information about their credit that is available to landlords and remanded the case. *See Handlin v. On-Site Manager, Inc.*, 187 Wn. App. 841, 850, 351 P.3d 226 (2015).

On remand, the Superior Court heard cross-motions for summary judgment, granted the Handlin's motion on four claims, and denied the fifth claim. The Handlins did not appeal the trial court's decision on the

[3] CP at 273, CP at 936:1-7, CP at 943-950.
[4] CP at 1-7; CP at 8-17.
[5] CP at 273, CP at 478 ¶1-6.
[6] CP at 944-950.

claim they lost. But On-Site appealed and the Court found there were genuine issues of fact that remained in dispute as to two of the disclosure claims and remanded those two claims for further proceedings. Slip Op. at 1-9. On-Site filed a petition for review. The facts that follow deal with the two claims on which the Handlins prevailed in the Court of Appeals.

Around August 5, 2013, the Handlins applied for an apartment at Forestview, which obtained a tenant-screening report about the Handlins from On-Site.[7] The tenant-screening report included information about the Handlins' credit history and other background data obtained from third-party vendors, including LexisNexis.[8] Forestview denied the Handlins' application, gave the Handlins On-Site's telephone number and told them On-Site could provide more information about the denial.[9]

On August 5, 2013, Karen Handlin called On-Site to discuss the denial. On-Site's renter relations representative told her that the application was denied because the report showed an eviction from 2008.[10] Ms. Handlin informed the representative that the Handlins had not been evicted from their apartment, and that she had documentation

[7] CP at 478, CP at 981-982 (p. 119:9 – p. 123:18); CP at 981-982 (p. 117:9 – p. 123:18); CP at 133 ¶4, CP at 170-174.
[8] CP at 133 ¶4, CP at 170-174.
[9] CP at 142, ln. 13 – CP 143, ln. 17; CP at 478 ¶4.
[10] CP at 273; CP at 478, ¶4-5.

showing that the parties had settled out of court.[11] On-Site's representative explained that On-Site would consider the court documents if the Handlins provided them.[12] On-Site recorded the exchange as follows:

> "Went over neg accts, collections, and eviction filings. Advised send court dismissal/satisfaction of judgment. Provided RR fax#."[13]

In addition, the representative noted as follows:

> "Went over filing..She stated that she settled out of court and never went to trial… Asked her to provide the documentation to update the report."[14]

Ms. Handlin personally faxed documentation to On-Site regarding the 2008 unlawful detainer action.[15] She also took the same documents to Forestview for it to reconsider the Handlins' application.[16] She believed that the Forestview employee who took the documents would forward the documentation to her superiors at Forestview.[17] Forestview faxed the documents to On-Site on August 9, 2013.[18] Upon receiving the faxed documents, On-Site updated the Handlins' screening report to state the

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[11] CP at 273; CP at 478 ¶5-6.
[12] CP at 273; CP at 478 ¶5.
[13] CP at 273.
[14] CP at 273.
[15] CP at 478 ¶6.
[16] CP at 143:9 – CP at 144:23, CP at 478 ¶6, CP at 479 ¶10.
[17] CP at 479 ¶10; CP at 539:19 – CP at 541:24.
[18] CP at 274-279.

unlawful detainer action had been dismissed.[19]

The Handlins tried to obtain a copy of their screening report but were not able to do so. Their attorney, Eric Dunn, then requested "copies of any and all consumer reports you made to Forestview Apartments regarding the Handlins, all information in your file regarding the Handlins as of the time of this request, and all sources of all such information."[20] On August 27, 2013, On-Site provided its disclosure to Mr. Dunn.[21] The report showed the Handlins' landlord-tenant court record at "Seattle-Sup.Ct", identified the case number as "369188," and listed "Onsite.com" as the source of the information instead of the vendor from whom On Site had obtained the information: LexisNexis.[22]

Landlord Tenant Court Records
From On-Site.com

Date Filed	Case Type	Court	Case Number	Notice Type
10/2008	LANDLORD TENANT COURT RECORD	SEATTLE-SUP.CT	369188	
Judgment	**Judgment Amount**	**Status**	**Amount Paid**	
DISMISSED 11/3/2008				
Defendants		**Defendant SSN(s)**		
KAREN HANDLIN MAXINE FORTUNE				

Despite having corrected the eviction record to show its dismissal, On-Site failed to make the post-reinvestigation disclosures required by statute.[23]

[19] CP at 270 ¶4; CP at 281-282; CP at 948.
[20] CP at 479 ¶8-9; CP at 286
[21] CP at 936:1-7; CP at 944-950.
[22] CP at 948; CP at 398:9-25.
[23] Verbatim Transcript of Proceeding (VTP) (Aug. 26, 2017) at 17:3-15.

III. ARGUMENT

A. ON-SITE HAS NOT ATTEMPTED TO MEET THE CRITERIA FOR REVIEW UNDER RAP 13.4(b)

RAP 13.4(b) establishes the four factors for the Court to consider in determining whether to grant review of a decision by the Court of Appeals. On-Site failed to identify which of these considerations apply to its petition. It failed to identify how the decision conflicted with any decision of the Supreme Court, as required in RAP 13.4(b)(1). It failed to identify how the decision conflicted with a published decision of the Court of Appeals, as required in RAP 13.4(b)(2). On-Site also failed to identify any "significant question of law" involved in the case, as required in RAP 13.4(b)(3). Finally, On-Site failed to identify any "issue of substantial public interest," involved with its petition, as required in RAP 13.4(b)(4). On-Site simply argues that the Court of Appeals decided the case incorrectly. The fact that On-Site disagrees with the decision below does not create an issue of substantial public interest. The Court decided the two claims correctly, applying established principles of law to the facts presented.

On-Site argues that the Court should rely on On-Site's interpretation of *Meyer v. Nat'l Tenant Network*, a decision by the U.S. District Court of the Northern District of California—not the Ninth

Circuit, as On-Site claims—based on California's Consumer Credit Reporting Agencies Act.[24] On-Site also argues that the Court should review its petition because On-Site "was entitled to rely" on its own incorrect understanding of agency law in our state. These arguments do not meet any of the requirements of RAP 13.4(b) and, as discussed below, are either incorrect or irrelevant. On-Site's petition should be denied.

B. ON-SITE'S FAILURE TO PRODUCE ITS SOURCES OF INFORMATION REGARDING THE HANDLINS IS A VIOLATION OF THE WFCRA

RCW 19.182.070(2) requires On-Site to "clearly and accurately disclose" all the information regarding Washingtonians upon their request, "including disclosure of the ***sources*** of the information." (Emphasis added). On-Site obtains background information about consumers by searching various databases maintained by other agencies (or "vendors").[25] The vendors who provided information to On-Site for use in the reports at issue in this case were LexisNexis, Experian, and Hygenics Data LLC .[26] On-Site gave the Handlins a joint tenant screening report including the following notation: "From On-Site.com" in the section entitled "Landlord Tenant Records" and that it listed "SEATTLE-

[24] *Meyer v. Nat'l Tenant Network*, 2014 WL 3381417 (N.D. Cal. 2014).
[25] CP at 981-982 (p. 119:9 – p. 122:16)
[26] CP at 398:9-25.

SUP.CT" as the court and the case number as "369188."[27] On-Site argues that it was under no statutory obligation to disclose which vendor produced the Handlins' unlawful detainer records when it finally disclosed their tenant screening report to them. On-Site's argument is inconsistent with the plain language of the statute.

The court must "determine the legislature's intent" when interpreting a statute. *Udall v. T.D. Escrow Services, Inc.*, 159 Wn.2d 903, 909, 154 P.3d 882 (2007). If the statue is not ambiguous, its plain and ordinary meaning is assigned. *Cerrillo v. Esparza*, 158 Wn.2d 194, 201, 142 P.3d 155 (2006). Further, "plain meaning is derived from the context of the entire act as well as 'any related statutes which disclose legislative intent about the provision in question.'" *Jametsky v. Olsen*, 179 Wn.2d 756, 762, 317 P.3d 1003 (2014). Finally, when guidance from case law is lacking, "[the court's] focus must be on reading the language … in a commonsense manner." *Faciszewski v. Brown*, 187 Wn.2d 308, 320, 386 P.3d 711 (2016).

The statute uses the plural "sources" when it requires that "all items of information in its files on that consumer, including disclosure of the sources of the information" are required to be "clearly and accurately"

[27] CP at 948.

disclosed. *See* RCW 19.182.070(2). That, along with the use of "all items," is an unambiguous call for complete disclosure of all information obtained and of all sources of that information. On-Site argues it complied with RCW 19.182.070(2) by providing only the name of court, but disclosures to consumers under the WFCRA are designed in part to enable consumers to identify and dispute information that is not complete or accurate. In enacting the WFCRA, the legislature found that Washingtonians "have a vital interest in establishing and maintaining creditworthiness" and the WFCRA requires agencies to "adopt reasonable procedures to promote … the proper use of credit data." *See* RCW 19.182.005. *See Handlin*, 187 Wn. App. at 850 ("The Fair Credit Reporting Act is designed to benefit consumers by giving them the same right of access to their credit information as is available to landlords, employers, or others who are evaluating their creditworthiness.").

Disclosing only the court from which an unlawful detainer record originated, as On-Site did here, is insufficient to assist consumers in disputing inaccurate information. On-Site admitted that it obtained this data from a third-party vendor, not directly from the courts.[28] *See Dreher v. Experian Information Solutions, Inc.*, 2013 WL 2389878 at *5 (E.D. Va.

[28] CP at 981-982 (p. 119:9 – p. 122:16).

2013) ("Whatever else it might mean, the term 'sources of information' certainly includes the entity that gave the information to Experian."). As the Court of Appeals correctly noted, the inclusion of the demarcation "From On-Site.com" further obscured the source of the landlord-tenant records information. Slip Op. at 12. In this case, identifying the vendor—the source of information for On-Site—is necessary to enable the Handlins to dispute any inaccurate or incomplete information in the vendor's system. On-Site's failure to provide the Handlins with the direct source of the inaccurate unlawful detainer information prevented the Handlins from disputing the errors in the vendor's system. The Court of Appeals was correct to find that On-Site is obligated to disclose its eviction-data vendor, which was its direct source of On-Site's unlawful detainer records.

To support its claim that it was not required to disclose LexisNexis or another eviction data vendor as the source of its information about landlord tenant court records, On-Site relies on *Meyer v. Nat'l Tenant Network*, 2014 WL 3381417 (N.D. Cal. 2014). In doing so, On-Site seriously mischaracterizes the scope and relevance of that case. On-Site states that the court in *Meyer* interpreted the term "source" as used in the WFCRA's federal counterpart. This is untrue. *Meyer* examined only ***California's*** credit reporting statute, Section 1785.18(a) of the California Consumer Credit Reporting Agencies Act (CCRAA). *See Meyer* at *1.

Section 1785.18(a) of the CCRAA includes a particular definition of "source" as it applies to matters of public record. That statute reads as follows:

> "Each consumer credit reporting agency which compiles and reports items of information concerning consumers which are matters of public record, shall specify in any report containing public record information the source from which that information was obtained, ***including the particular court***, if there be such, and the date that the information was initially reported or publicized."

Cal. Civ. Code § 1785.18(a) (Emphasis added).

Meyer determined that a plain reading of the California statute provided that the "source" was the public entity that reports or publicizes the public record information. This determination was based in part on the statute's emphasis on the identification of the particular court and in part on the fact that the statute required credit reporting agencies to disclose the date that the information was initially reported. The court found that such specific demands indicated an intent that the cited source of information should be limited to exclude intermediary sources "disconnected from its creation as a public record." *See Meyer* at *3.

Meyer is irrelevant to the case at hand, which seeks relief under the WFCRA. The WFCRA contains no provision even remotely similar to CCRAA § 1785.18(a). As such, *Meyer* provides no compelling argument

to review the lower court's ruling that listing only the superior court does not satisfy the statutory requirements to disclose the "sources" of information under RCW 19.182.070(2). Slip Op. at 12.

C. FAILURE TO MAKE POST-REINVESTIGATION DISCLOSURES IS A VIOLATION OF THE WFCRA

The Handlins' second claim before this Court is based on On-Site's failure to make "post-reinvestigation" disclosures, which are required after an agency reinvestigates information disputed by a consumer. *See* RCW 19.182.090(8). WFCRA's consumer dispute mechanism appears at RCW 19.182.090. If a consumer disputes the "completeness or accuracy" of the information in his or her report and "notifies the agency directly of the dispute" the agency is mandated to reinvestigate the information. *See* RCW 19.182.090(1) ("shall reinvestigate without charge"). The agency then has up to 30 days to complete the reinvestigation. *Id*. Regardless of how the reinvestigation turns out, the agency must notify the consumer of results "within five business days." *See* RCW 19.182.090(8)(a). The statute requires the post-reinvestigation notice to include specific information such as: "(i) a statement that the reinvestigation is completed" and "(ii) a consumer report that is based upon the consumer's file as that file is revised as a result of the reinvestigation," among other disclosures. *Id*.

In this case, Ms. Handlin disputed the information on August 5, 2013, after calling On-Site and learning that On-Site's records incorrectly reflected that the Handlins had experienced an eviction. Ms. Handlin informed the On-Site representative that the 2008 unlawful detainer action had been resolved in the Handlins' favor, and that the information in On-Site's records was incomplete because the favorable resolution was omitted from the report. [29] The responsibility of On-Site's renter relations representatives involves taking calls from consumers and handling disputes.[30] The representative clearly regarded Ms. Handlin's communication to her as a dispute. The representative conducted a reinvestigation by requesting documentation, reviewed it, and corrected the Handlin's report to reflect that the unlawful detainer action was dismissed.[31] But On-Site never made the post-reinvestigation disclosures. Indeed, On-Site admitted not having done so in its own motion for summary judgment and at the Superior Court hearing.[32] Not until it appealed the trial court's decision did On-Site claim to have conducted the post-reinvestigation disclosures.[33]

[29] CP at 273, CP at 478 ¶ 1-6.
[30] CP at 961 (p. 37:1-19); CP at 956 (p. 17:1- p. 18:9); CP at 957 (p. 23:3 – p. 24:3).
[31] CP at 273, CP 948.
[32] CP at 123: 8-25 and VTP (August 26, 2016) at 17:3-15.
[33] CP at 123:8-25, CP at 497: 1-7, CP at 506:14 – 508:16, CP at 616-623, CP at 671: 16-18, VTP (August 26, 2016) at 17:3-15.

On-Site now argues, for the first time in this case, that Washington courts should adopt the Ninth Circuit's opinion in *Carvalho v. Equifax*, 615 F.3d 1217 (9th Cir. 2010), a case based on the California Consumer Credit Reporting Agencies Act. In *Carvalho*, the court analyzed case law involving the federal FCRA in the absence of relevant California precedent, and found that an actual inaccuracy must exist to support a consumer's reinvestigation claim. *See Carvalho*, 615 F.3d at 1229-1232. In *Carvalho*, which involved a medical debt, the consumer did not claim a specific error in her credit report; the information in the report was technically correct. Rather, she claimed a "latent" inaccuracy, in that the information should not have been included until the hospital had properly billed her insurer, and the reinvestigation should have included an inquiry into her legal defenses to payment. The court rejected this argument, saying "…reinvestigation claims are not the proper vehicle for collaterally attacking the legal validity of consumer debts." *Id.* at 1231. The credit reporting agency's report was accurate, even if the consumer disputed the underlying debt, so the consumer could not bring a claim for failing to properly reinvestigate.

The case at hand is distinct in two ways. First, the Handlins did, in fact, show that On-Site's report dated August 5, 2013, was inaccurate. Ms. Handlin called On-Site on August 5, 2013, was told about the 2008

unlawful detainer action information, explained that it was inaccurate, and provided documentation to support her claim.[34] On-Site acknowledged this when it asked Ms. Handlin to provide documentation to support her claim and—having received it—corrected the report on August 9, 2013, to reflect that the 2008 unlawful detainer action was dismissed on November 3, 2008.[35] Second, the Handlins' claim, unlike that in *Carvalho*, did not arise from a failure to reinvestigate, but instead from On-Site's failure to provide the post-reinvestigation disclosures required by RCW 19.182.090(8)—a duty triggered by the reinvestigation started on August 5, 2013, that led to the corrected August 9, 2013, report. The Handlins do not dispute the corrected August 9, 2013, tenant screening report (released to them on August 27, 2013) but they quite clearly disputed the August 5, 2013, version. On-Site's argument that Ms. Handlin's deposition testimony was inconsistent because she did not dispute the corrected August 9, 2013, report is both misleading and irrelevant to the question of whether On-Site fulfilled its notice obligation under RCW 19.182.090(8).

On-Site also argues that it provided its post-reinvestigation disclosures directly to Forestview who, On-Site alleged for the first time on appeal, was the Handlins' agent because its employee faxed

[34] CP at 273, CP at 478 ¶ 1-6.
[35] CP at 273, CP at 948.

documentation regarding the 2008 unlawful detainer action to On-Site. On-Site cites to *Udall v. T.D. Escrow Servs., Inc.*, 159 Wn.2d 903, 154 P.3d 882 (2007) to support its position. But under *Udall*, a third party's belief that an agent has apparent authority "to act on behalf of the principal" must be based entirely on "the principal's manifestations." *Id.* at 913. On-Site provides only evidence of the purported agent's manifestations—that Forestview faxed the updated information—which does not meet the *Udall* standard. Moreover, the belief of the party claiming the agent has apparent authority "must be such that the claimant's actual, subjective belief is objectively reasonable." *King v. Riveland*, 125 Wn.2d 500, 507, 886 P.2d 160 (1994); *Udall*, 159 Wn.2d at 913. However, as On-Site correctly informed the trial court in its own motion for summary judgment: ". . . [the Handlins] adamantly testified Forestview was never acting on their behalf in its communications with On-Site,"[36] a point On-Site reiterated at the hearing on summary judgment.[37] On-Site's alleged belief that Forestview was acting as the Handlins' agent is not credible or reasonable.

D. ON-SITE'S FAILURE TO DISCLOSE WAS WILLFUL

Under RCW 19.182.150, the court may award statutory damages if

[36] CP at 508:10-13, CP at 479 ¶ 12.
[37] VTP (August 26, 2016) at 39:15-19.

it finds that a violation of the WFCRA was willful. A FCRA violation is willful if "done knowingly or recklessly." *Haley v. TalentWise, Inc.*, 9 F. Supp.3d 1188, 1194 (W.D. Wash. 2014) (interpreting federal FCRA). On-Site argues that the Court of Appeals erred in interpreting *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 127 S.Ct. 2201, 167 L. Ed. 2d 1045 (2007), to find that On-Site "ran a risk of violating the law substantially greater than the risk associated with a reading that was merely careless." Slip Op. at 10-11. In *Safeco*, a consumer was charged a higher insurance premium because of his credit report but the insurance company did not provide an adverse notice regarding a rate increase to a consumer. *Safeco*, 551 U.S. at 54. The statutory definition of "adverse action" included "a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage" that was offered. *See* 15 U.S.C. § 1681a(k)(1)(B)(i). The insurance company interpreted the term "increase" as not applying to this consumer because it had not previously insured the consumer and read the "adverse action" requirement under 15 U.S.C. § 1681m(a) as not applying to new applicants. *Safeco*, 551 U.S. at 61. The Court found that this reading "although erroneous, was not objectively unreasonable" and was grounded on the language of the federal FCRA statute. *Safeco*, 551 U.S. at 69-70.

In this case, however, On-Site's reliance on *Meyer* is unreasonable because the WFCRA contains no provision even remotely similar to CCRAA § 1785.18(a). No reading of *Safeco* can change that. On-Site's failure to disclose the sources of the information regarding the 2008 unlawful detainer action that appeared in the Handlins' tenant-screening report was willful. On-Site failed to disclose that its source of information for landlord-tenant records is a third-party vendor on contract with On-Site.[38] By doing so, it prevented the Handlins from disputing incomplete or inaccurate landlord-tenant records directly with the vendor. On-Site was aware that it had obtained the Handlins' unlawful detainer records from a vendor and not directly from the court records. RCW 19.182.070 is not ambiguous when it requires disclosures of all "sources" to ensure that inaccuracies can be addressed with those sources. If On-Site were only required to report the original source of the information and not its direct source of information, Washingtonians would have no means of identifying and contacting the inaccurate reporter to correct inaccurate or incomplete information, completely undermining the statute. This is not objectively reasonable.

[38] CP at 398: 9-23, CP at 981-982 (p. 120:5 – p. 121:3), VTP (August 26, 2016) at 19:3-11, CP at 948.

Likewise, On-Site has not provided a reasonable explanation for its failure to make the requisite post-reinvestigation disclosures to the Handlins. On-Site argued before the trial court that it was not required to conduct any reinvestigation or provide post-reinvestigation disclosures and had not done so.[39] Unlike in *Safeco*, On-Site's position that Ms. Handlin's call with On-Site—on April 5, 2013—informing it that the 2008 unlawful detainer action was resolved in her favor was not a "dispute" is not a reasonable interpretation of the statute or even of On-Site policy regarding disputes.[40] RCW 19.182.090 required On-Site to conduct a reinvestigation "if the completeness or accuracy" of any information in the consumer's report "is disputed by the consumer and the consumer notifies the agency directly of the dispute…" The meaning of the word "dispute" in the statutory context is not ambiguous, and On-Site proffered no alternative definition, except to say it does not believe a dispute occurred. Second, On-Site's argument that its representative requesting documentary proof, receiving it, and updating the Handlins' report did not constitute a reinvestigation, is not an objectively reasonable interpretation of the evidence. On-Site's argument that the Handlins could not have disputed any information unless it was on file with On-Site at the time of the

[39] VTP (August 26, 2016) at 17:3-15.
[40] CP 961 (p. 37:1-19); CP 956 (p. 17:1 – p. 18:9); CP 957 (p. 23:3 – p. 24:3).

dispute has never before been raised and should be dismissed.

Finally, On-Site argued that Forestview was the Handlins' agent and On-Site had made the post-reinvestigation disclosures to Forestview.[41] As this Court has ruled, "a prerequisite of an agency is control of the agent by the principal." *Bain v. Metro. Mortg. Grp., Inc.*, 175 Wn.2d 83, 107, 285 P.3d 34 (2012). The Handlins testified, and On-Site acknowledged to this testimony, that Forestview was not their agent and was not acting on their behalf.[42] On-Site's purported reliance on Forestview's actions to support its agency claim was objectively unreasonable under existing Washington law.

IV. CONCLUSION

On-Site fails to satisfy the requirements for review under RAP 13.4(b). On-Site's reliance on California law and the proffered agency relationship between the Handlins and Forestview is patently unreasonable. The Court should deny the Petition for Review.

RESPECTFULLY SUBMITTED this 10th day of August, 2018.

NORTHWEST JUSTICE PROJECT

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[41] CP at 508: 10-13, VTP (August 26, 2016) at 39: 15-19.
[42] CP 508:10-13, VTP (August 26, 2016) at 39:15-19, CP at 479 ¶ 12.

STATUTORY APPENDIX

Pursuant to RAP 13.4(c)(9), attached please find a copy of the following statutes:

1. RCW 19.182.005

   RCW 19.182.070

   RCW 19.182.090

   RCW 19.182.150

2. 15 U.S.C. § 1681a(k)(1)(B)(i)

   15 U.S.C. § 1681m(a)

3. California Consumer Credit Reporting Agencies Act Section 1785.18(a)

RCW 19.182.005

Findings—Declaration.

The legislature finds and declares that consumers have a vital interest in establishing and maintaining creditworthiness. The legislature further finds that an elaborate mechanism using credit reports has developed for investigating and evaluating a consumer's creditworthiness, credit capacity, and general reputation and character. As such, credit reports are used for evaluating credit card, loan, mortgage, and small business financing applications, as well as for decisions regarding employment and the rental or leasing of dwellings. Moreover, financial institutions and other creditors depend upon fair and accurate credit reports to efficiently and accurately evaluate creditworthiness. Unfair or inaccurate reports undermine both public and creditor confidences in the reliability of credit granting systems.

Therefore, this chapter is necessary to assure accurate credit data collection, maintenance, and reporting on the citizens of the state. It is the policy of the state that credit reporting agencies maintain accurate credit reports, resolve disputed reports promptly and fairly, and adopt reasonable procedures to promote consumer confidentiality and the proper use of credit data in accordance with this chapter.

RCW 19.182.070

Disclosures to consumer.

A consumer reporting agency shall, upon request by the consumer, clearly and accurately disclose:

(1) All information in the file on the consumer at the time of request, except that medical information may be withheld. The agency shall inform the consumer of the existence of medical information, and the consumer has the right to have that information disclosed to the health care provider of the consumer's choice. Nothing in this chapter prevents, or authorizes a consumer reporting agency to prevent, the health care provider from disclosing the medical information to the consumer. The agency shall inform the consumer of the right to disclosure of medical information at the time the consumer requests disclosure of his or her file.

(2) All items of information in its files on that consumer, including disclosure of the sources of the information, except that sources of information acquired solely for use in an investigative report may only be disclosed to a plaintiff under appropriate discovery procedures.

(3) Identification of (a) each person who for employment purposes within the two-year period before the request, and (b) each person who for any other purpose within the six-month period before the request, procured a consumer report.

(4) A record identifying all inquiries received by the agency in the six-month period before the request that identified the consumer in connection with a credit transaction that is not initiated by the consumer.

(5) An identification of a person under subsection (3) or (4) of this section must include (a) the name of the person or, if applicable, the trade name under which the person conducts business; and (b) upon request of the consumer, the address of the person.

RCW 19.182.090

Consumer file—Dispute—Procedure—Notice—Statement of dispute—Toll-free information number.

(1) If the completeness or accuracy of an item of information contained in a consumer's file at a consumer reporting agency is disputed by the consumer and the consumer notifies the agency directly of the dispute, the agency shall reinvestigate without charge and record the current status of the disputed information before the end of thirty business days, beginning on the date the agency receives the notice from the consumer.

(2) Before the end of the five business-day period beginning on the date a consumer reporting agency receives notice of a dispute from a consumer in accordance with subsection (1) of this section, the agency shall notify any person who provided an item of information in dispute.

(3)(a) Notwithstanding subsection (1) of this section, a consumer reporting agency may terminate a reinvestigation of information disputed by a consumer under subsection (1) of this section if the agency determines that the dispute by the consumer is frivolous or irrelevant, including by reason of a failure of the consumer to provide sufficient information.

(b) Upon making a determination in accordance with (a) of this subsection that a dispute is frivolous or irrelevant, a consumer reporting agency shall notify the consumer within five business days of the determination. The notice shall be made in writing or any other means authorized by the consumer that are available to the agency, but the notice shall include the reasons for the determination and a notice of the consumer's rights under subsection (6) of this section.

(4) In conducting a reinvestigation under subsection (1) of this section with respect to disputed information in the file of any consumer, the consumer reporting agency shall review and consider all relevant information submitted by the consumer in the period described in subsection (1) of this section with respect to the disputed information.

(5)(a) If, after a reinvestigation under subsection (1) of this section of information disputed by a consumer, the information is found to be inaccurate or cannot be verified, the consumer reporting agency shall promptly delete the information from the consumer's file.

(b)(i) If information is deleted from a consumer's file under (a) of this subsection, the information may not be reinserted in the file after the deletion unless the person who furnishes the information verifies that the information is complete and accurate.

(ii) If information that has been deleted from a consumer's file under (a) of this subsection is reinserted in the file in accordance with (b)(i) of this subsection, the consumer reporting agency shall notify the consumer of the reinsertion within thirty business days. The notice shall be in writing or any other means authorized by the consumer that are available to the agency.

(6) If the reinvestigation does not resolve the dispute or if the consumer reporting agency determines the dispute is frivolous or irrelevant, the consumer may file a brief statement setting forth the nature of the dispute. The consumer reporting agency may limit these statements to not more than one hundred words if it provides the consumer with assistance in writing a clear summary of the dispute.

(7) After the deletion of information from a consumer's file under this section or after the filing of a statement of dispute under subsection (6) of this section, the consumer reporting agency shall, at the request of the consumer, furnish notification that the item of information has

been deleted or that item of information is disputed. In the case of disputed information, the notification shall include the statement filed under subsection (6) of this section. The notification shall be furnished to any person specifically designated by the consumer, who has, within two years before the deletion or filing of a dispute, received a consumer report concerning the consumer for employment purposes, or who has, within six months of the deletion or the filing of the dispute, received a consumer report concerning the consumer for any other purpose, if these consumer reports contained the deleted or disputed information.

(8)(a) Upon completion of the reinvestigation under this section, a consumer reporting agency shall provide notice, in writing or by any other means authorized by the consumer, of the results of a reinvestigation within five business days.

(b) The notice required under (a) of this subsection must include:

(i) A statement that the reinvestigation is completed;

(ii) A consumer report that is based upon the consumer's file as that file is revised as a result of the reinvestigation;

(iii) A description or indication of any changes made in the consumer report as a result of those revisions to the consumer's file;

(iv) If requested by the consumer, a description of the procedure used to determine the accuracy and completeness of the information shall be provided to the consumer by the agency, including the name, business address, and telephone number of any person contacted in connection with the information;

(v) If the reinvestigation does not resolve the dispute, a summary of the consumer's right to file a brief statement as provided in subsection (6) of this section; and

(vi) If information is deleted or disputed after reinvestigation, a summary of the consumer's right to request notification to persons who have received a consumer report as provided in subsection (7) of this section.

(9) In the case of a consumer reporting agency that compiles and maintains consumer reports on a nationwide basis, the consumer reporting agency must provide to a consumer who has undertaken to dispute the information contained in his or her file a toll-free telephone number that the consumer can use to communicate with the agency. A consumer reporting agency that provides a toll-free number required by this subsection shall also provide adequately trained personnel to answer basic inquiries from consumers using the toll-free number.

RCW 19.182.150

Application of consumer protection act—Limitation—Awards—Penalties—Attorneys' fees.

The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Violations of this chapter are not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. The burden of proof in an action alleging a violation of this chapter shall be by a preponderance of the evidence, and the applicable statute of limitation shall be as set forth in RCW 19.182.120. For purposes of a judgment awarded pursuant to an action by a consumer under chapter 19.86 RCW, the consumer shall be awarded actual damages and costs

of the action together with reasonable attorney's fees as determined by the court. However, where there has been willful failure to comply with any requirement imposed under this chapter, the consumer shall be awarded actual damages, a monetary penalty of one thousand dollars, and the costs of the action together with reasonable attorneys' fees as determined by the court.

15 U.S.C. § 1681a

Definitions; rules of construction

. . .

(k) Adverse action

(1) Actions included

The term “adverse action”--

(A) has the same meaning as in section 1691(d)(6) of this title; and

(B) means--

(i) a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in connection with the underwriting of insurance;

(ii) a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee;

(iii) a denial or cancellation of, an increase in any charge for, or any other adverse or unfavorable change in the terms of, any license or benefit described in section 1681b(a)(3)(D) of this title; and

(iv) an action taken or determination that is--

(I) made in connection with an application that was made by, or a transaction that was initiated by, any consumer, or in connection with a review of an account under section 1681b(a)(3)(F)(ii) of this title; and

(II) adverse to the interests of the consumer.

. . .

15 U.S.C. § 1681m

Requirements on users of consumer reports

(a) Duties of users taking adverse actions on basis of information contained in consumer reports

If any person takes any adverse action with respect to any consumer that is based in whole or in part on any information contained in a consumer report, the person shall--

(1) provide oral, written, or electronic notice of the adverse action to the consumer;

(2) provide to the consumer written or electronic disclosure--

(A) of a numerical credit score as defined in section 1681g(f)(2)(A) of this title used by such person in taking any adverse action based in whole or in part on any information in a consumer report; and

(B) of the information set forth in subparagraphs (B) through (E) of section 1681g(f)(1) of this title;

(3) provide to the consumer orally, in writing, or electronically--

(A) the name, address, and telephone number of the consumer reporting agency (including a toll-free telephone number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis) that furnished the report to the person; and

(B) a statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken; and

(4) provide to the consumer an oral, written, or electronic notice of the consumer's right--

(A) to obtain, under section 1681j of this title, a free copy of a consumer report on the consumer from the consumer reporting agency referred to in paragraph (3), which notice shall include an indication of the 60-day period under that section for obtaining such a copy; and

(B) to dispute, under section 1681i of this title, with a consumer reporting agency the accuracy or completeness of any information in a consumer report furnished by the agency.

. . .

Cal.Civ.Code § 1785.18

§ 1785.18. Matters of public record; source; reports for employment purposes; prohibited information

(a) Each consumer credit reporting agency which compiles and reports items of information concerning consumers which are matters of public record, shall specify in any report containing public record information the source from which that information was obtained, including the particular court, if there be such, and the date that the information was initially reported or publicized.

CERTIFICATE OF SERVICE

I hereby declare, under penalty of perjury under the laws of the State of Washington, that on this 10th day of August, 2018, I caused a true copy of the foregoing document to be served via ECF filing:

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SIGNED at Seattle, Washington, this 10th day of August, 2018.

NORTHWEST JUSTICE PROJECT

Norma Butler

Norma Butler, Legal Assistant

NORTHWEST JUSTICE PROJECT KING COUNTY

August 10, 2018 - 4:24 PM

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Appellate Court Case Number:	96025-9
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