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Court of Appeals No. 51001-4-II

IN THE WASHINGTON STATE COURT OF APPEALS, DIVISION II

AVH & BJ HOLDINGS 2, LLC, a Washington limited
liability company, Plaintiff - Appellant,

v.

TIMOTHY JOHNSON COMMERCIAL PROPERTIES, a
Washington limited liability company; TIMOTHY N.
JOHNSON and JANE DOE JOHNSON, and their marital
community, Defendant – Appellee.

**APPELLANT AVH & BJ HOLDINGS 2, LLC'S
REPLY BRIEF**

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I. ARGUMENT ON REPLY

A. The Johnson Parties' Counter-Statement of the Case Fails to Comply with RAP 10.3.¹

RAP 10.3 requires the parties to make fair statements of the case, without argument, and to make a reference to the record for each factual statement. The Appellees' Opening Brief fails to meet these requirements, presenting instead an argumentative mischaracterization of the factual record to which AVH must respond.

Among the more significant mischaracterizations, the Johnson Parties falsely state that condemnation proceedings were not threatened prior to closing on November 23, 2015. (Appellees' Opening Brief at 3.) Relatedly, the Johnson Parties state that "Johnson perceived no threat of condemnation." (Appellees' Opening Brief at 6.) In the trial court's oral ruling of June 30, 2017, it found there was a threatened condemnation, stating: "I do interpret Paragraph 12(f), no pending or threatened condemnation or similar proceedings affecting the property to be a warranty that LaClare did not fulfill."² (RP 38:14-17.) The Johnson Parties did not appeal from, and have not challenged the trial court's finding. "An

¹ AVH incorporates by reference the defined terms in Appellant's Opening Brief.

² (*Cf.* Appellees' Opening Brief at 30 (stating "[i]n other words, no condemnation was pending or threatened prior to Closing" and suggesting (falsely) the trial court made such a determination due to lack of evidence).)

unchallenged finding of fact becomes the law of the case, and on appeal is to be treated as a verity.” *Pier 67, Inc. v. King Cty.*, 71 Wn.2d 92, 94, 426 P.2d 610, 612 (1967).

This mischaracterization by the Johnson Parties is not a minor one. The Johnson Parties had a duty to disclose existing material facts that were not readily ascertainable. RCW 18.86.030; *Svensen v. Stock*, 143 Wn.2d 546, 556-58, 23 P.3d 455 (2001). “A material fact is ‘information that substantially adversely affects the value of the property or a party’s ability to perform its obligations in a real estate transaction, *or operates to materially impair or defeat the purpose of the transaction.*’” *Bloor v. Fritz*, 143 Wn. App. 718, 733, 180 P.3d 805 (2008) (emphasis added; quoting RCW 18.86.010(9)).

In this case, the threat of condemnation was material. The uncontested evidence is that AVH would not have acquired the Property if the Johnson Parties disclosed their knowledge of the Project and its impact on the Property, or disclosed Johnson’s communications with Sound Transit about those issues, because the threat of a forced sale or condemnation necessarily destroyed the very purpose for which AVH was acquiring the Property in the first place, *i.e.*, to lease it to Jordan River Moving & Storage to operate a moving and storage business. (CP 49-50; CP 664-667; CP 668-69; CP 676.)

The threat of condemnation was a material, undisclosed problem, and there were sound evidentiary reasons for the trial court to find the threat of condemnation in this case. Johnson’s written communications confirm that he understood the Property was under threat of condemnation. (*E.g.*, CP 95.) Johnson specifically wrote “[t]hey know we can’t sell because it is common knowledge that ST [Sound Transit] is buying it and *can be condemned* so they string us along.”³ (*Id.* (emphasis added).)

A “threat” is “an indication of something impending and usu. undesirable or unpleasant <the air held a ~ of rain>”; similarly, “threatened” means “to announce as intended or possible <~ to buy a car>.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 2382 (2002); (CP 48.) Here, it was clearly announced to, and known by the Johnson Parties that condemnation of the Property by Sound Transit was intended or possible. Under the facts of this case, there can be no reasonable argument to the contrary.

It should not be lost that Johnson received a private email from Sound Transit’s Allison Gregg on July 27, 2015 – *three days* before the PSA was signed – in which Ms. Gregg wrote that she *expected* Sound Transit to

³ The Johnson Parties highlight that Sound Transit’s email communications with Johnson did not use the words “condemn,” or “eminent domain,” but ignore that *Johnson himself* used the term in his communications with LaClare. (Appellees’ Opening Brief at 13.)

make an offer to acquire the Property by December 2015, or possibly a month earlier.⁴ (CP 657; *see* CP 54-69.) Contrast this Sound Transit communication Johnson received immediately prior to execution of the PSA, with the Johnson Parties' statement that "[n]ear the end of June 2015, Johnson and Burrows concluded that, despite their two years of effort, Sound Transit was not able or willing to purchase the Property." (Appellees' Opening Brief at 5.) The Johnson Parties are not being candid.

The Johnson Parties accuse AVH of using the terms "threatened" and "condemnation" as if Sound Transit's acquisition "were a *fait accompli*," but AVH has never argued that Sound Transit initiated condemnation proceedings prior to closing, or made an offer to acquire the Property (in lieu of condemnation) prior to closing. It was the known, undisclosed threat of condemnation about which AVH complains. For that threat to exist, no absolute certainty was required, and no absolute certainty has been argued by AVH. Sound Transit did not need to formally commence condemnation procedures, or pass resolutions pre-closing for there to be a threatened condemnation.

⁴ The Johnson Parties argue that Johnson had no knowledge that wasn't already available to the public, but it is not true. Johnson's communications with Sound Transit, including the email that is now CP 657, contained information that was not in the public record.

Next, continuing a problem from the trial court proceedings, the Johnson Parties continue to mislead about the representations in Section 13 of the PSA. (*See* Appellees’ Opening Brief at 7.) AVH’s representation in Section 13 was qualified by predicate language the Johnson Parties intentionally omit from their quotation that they want the Court to miss. (*See* CP 59 at § 13; Appellant’s Opening Brief at 31-33; *cf.* Appellees’ Opening Brief at 7.) AVH did not agree to rely upon its own pre-closing inspection for things that were the subject of written representations and warranties in the PSA, specifically including the representation that there were no pending or threatened condemnation or similar proceedings. (CP 59 at § 13; *see* CP 58 at § 12(f).)

In their Counter-Statement of the Case, the Johnson Parties also assert that “Johnson and [Sound Transit’s Allison] Gregg corresponded only a handful of times during a two-year span, which communication was almost always initiated by Johnson.” (Appellees’ Opening Brief at 4.) To be accurate, the emails between Johnson and Sound Transit representatives, including Ms. Gregg, dated between April 29, 2014 and July 27, 2015, are collected at CP 92 to CP 94, and CP 626 to CP 659. Not one of these communications was disclosed or provided to AVH pre-closing. (CP 50 at ¶ 7.)

In the Counter-Statement of the Case, the Johnson Parties further argue that “**Appellant Fails to Conduct Appropriate Due Diligence**” and characterize the efforts of AVH’s broker, Billy Moultrie, as being “minimal.”⁵ (Appellees’ Opening Brief at 7.) Unrebutted testimony from Moultrie proves, however, that he requested due diligence materials from Johnson, reviewed all materials provided, asked questions, reviewed environmental reports, arranged for a physical inspection of the property, reviewed the pertinent lease agreement, and appropriately guided the transaction to closing. (CP 712-14.) Moreover, it is undisputed that Moultrie asked Johnson specifically what due diligence information he had, Moultrie told Johnson “[t]he more the better,” and Johnson did not disclose or provide any of his many written communications with Sound Transit. (CP 407; CP 50, ¶ 7.)

⁵ The Johnson Parties repeatedly emphasize that two brokers were involved for AVH and state that “[i]t’s remarkable that Appellant barely acknowledges that it was represented by two brokers.” (Appellees’ Opening Brief at 15.) AVH engaged a single real estate brokerage firm—NAI Puget Sound Properties—as the Johnson Parties admit. (Appellees’ Opening Brief at 6; CP 397.) It is not remarkable at all that the firm utilized more than one person. Information on the website of Timothy Johnson Commercial Properties, of which the Court may take judicial notice, reveals that it also has other brokers in addition to Johnson working for it. See <http://www.johnson-commercial.com/about/> (last visited Feb. 28, 2018).

Finally, the Johnson Parties state in their Counter-Statement of the Case that “[a]round Closing, Appellant became aware that Sound Transit might be interested in purchasing the Property.” (Appellees’ Opening Brief at 9.) The evidence is that AVH did not learn about the Tacoma Link Expansion Project or discover Sound Transit’s plans until *after closing*, when a Sound Transit employee approached a contractor working for AVH and inquired what he was doing because the Property was “our [*i.e.*, Sound Transit’s] Property.” (CP 51 at ¶ 10.) Shortly thereafter, AVH had discussions with Sound Transit and Sound Transit delivered a letter to AVH via certified mail concerning the Tacoma Link Expansion Project and Sound Transit’s intentions, including its right to condemn the Property in the event “an acceptable agreement cannot be reached.” (*Id.* at ¶¶ 10-11; CP 70-71.)

B. There is Not a Scintilla of Evidence that Anything was Disclosed to AVH Pre-Closing Concerning a Possible Acquisition or Condemnation of the Property by Sound Transit.

The Johnson Parties falsely argue that “Sound Transit’s potential interest in the Property, and its ability to impact Buyer’s use of the same, was manifest in its other encumbrances on or near the Property.”⁶

⁶ The Johnson Parties also falsely argue that “[b]ecause Appellant had knowledge of Sound Transit’s potential interest in, and ability to impact its use of the Property prior to Closing, Appellant had reason to investigate—which may make accessing readily ascertainable information even easier.”

(Appellees’ Opening Brief at 37; *see also id.* at 26-27.) To make this argument, the Johnson Parties rely on (1) Sound Transit owning neighboring property (which of course is no encumbrance at all); (2) a survey that indicated minor property line encroachment by light bars and a Plywood Tacoma sign;⁷ (3) a Construction Agreement between LaClare and Sound Transit allowing Sound Transit to apply and maintain a waterproof sealer to the foundation and to lay and maintain fill dirt up against it;⁸ and (4) a temporary Street Occupancy Permit that allowed Sound Transit to temporarily use a City of Tacoma right of way for construction activities in support of a separate project, *i.e.*, the Tacoma Trestle Track and Signal Project.⁹

AVH respectfully asks the Court to carefully review these documents relied upon by the Johnson Parties, because what the Court will see from this review is that those documents have literally nothing to do or say about a possible acquisition or condemnation of the Property by Sound

(Appellees’ Opening Brief at 38.) In addition, the Johnson Parties falsely state that “[t]he undisputed facts establish that Appellant had actual and constructive notice of Sound Transit’s potential interest.” (Appellees’ Opening Brief at 32.) The Johnson Parties make no citation to the record to support these false statements. No evidence exists to support them.

⁷ (CP 210.)

⁸ (CP 212-13.)

⁹ (CP 216-25.) In their discussion of the Street Occupancy Permit, the Johnson Parties’ omit any reference to its temporary nature for temporary construction staging. (Appellees’ Opening Brief at 26-27, 37-38.)

Transit. (CP 210-225.) The Johnson Parties attempt to equate minor encroachments, a Construction Agreement that, if anything, is an example of Sound Transit honoring LaClare's property rights, and a Street Occupancy Permit for temporary construction staging, with a total takeover of the Property by forced sale or condemnation. (Appellees' Opening Brief at 26-27, 37-38.) But these are not the same or related defects, as the Johnson Parties argue.

By way of comparison, in *Sloan v. Thompson*, Division I held that defects of a leaky roof, faulty deck, and improperly flushing toilets were separate from structural defects in first floor framing and in the septic system of the same house. *Sloan v. Thompson*, 128 Wn. App. 776, 790, 115 P.3d 1009 (2005). On the other hand, in *Douglas v. Visser*, Division I also recognized that a buyer who discovers rot in a house is on notice of that defect, even if the defect proves to be magnitudes worse than the buyer anticipated. *Douglas v. Visser*, 173 Wn. App. 823, 831-32, 295 P.3d 800 (2013). While the extent of damage alone cannot change the character of a defect, knowledge of one defect does not impose a duty of further inquiry into all other defects with a particular property. The rule of law articulated in *Sloan* does have something to say in this appeal. AVH had no duty of further inquiry into a possible condemnation—particularly where it was expressly told none was pending or threatened—based upon receiving

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documents involving Sound Transit in unrelated matters. *Sloan*, 128 Wn. App. at 790; *see Rummer v. Throop*, 38 Wn.2d 624, 633, 231 P.2d 313 (1951).

C. AVH Presented Evidence Showing the Threatened Condemnation was not Readily Ascertainable.

The Johnson Parties argue that AVH failed to produce evidence that the threat of condemnation by Sound Transit was not readily ascertainable. (Appellees' Opening Brief at 38.) The Johnson Parties are wrong. They ignore entirely Moultrie's testimony that digging through Sound Transit's website is not something buyers, or their brokers do as an ordinary part of due diligence, or that they have time to do. (CP 712-14 at 38:2-40:3.) Moultrie's testimony concerning the unreasonableness of what the Johnson Parties suggest buyers and brokers should be required to do (apparently even to uncover explicit misrepresentations by a seller) cannot be ignored, as the Johnson Parties attempt.

Q. Do you have time in your job as a commercial real estate broker to review all available information that may be out there on the worldwide web or otherwise concerning or which could possibly relate to a particular property?

A. I do not.

Q. Do you think it's reasonable to expect someone in your position to do so?

A. I don't think so.

Q. How difficult or time-consuming would that be to go to various agencies, websites, or any governmental entities, counties, city, municipality, otherwise to review all publicly available information and try and determine whether or not any particular piece of information may or may not relate to a property that you're involved in brokering?

A. It's a considerable amount of work, especially if you're working maybe up to six to seven transactions at one time. It's difficult to do that for every deal.

(CP 715-16 at 180:16-181:9.)

To highlight this point, consider that even with the benefit of perfect hindsight, if a buyer or broker had hypothetically read the articles that the Johnson Parties rely upon today to claim Sound Transit's contemplated acquisition of the Property was ubiquitous, would the problem have readily illuminated?¹⁰ The articles found at CP 449-50, CP 452, CP 454-58, CP 460-62, and CP 466-69 do not mention the Property at all. Only the June 2015 Environmental Evaluation posted to Sound Transit's website discussed and depicted expanding the Operations and Maintenance Facility onto the Property. The position urged by the Johnson Parties would require buyers and their brokers to go hunting for needles in haystacks to uncover the falsity of written warranties and representations they already bargained for.

¹⁰ (See Appellees' Opening Brief at 11-12.)

D. Johnson Owed a Duty of Disclosure.

The Johnson Parties attempt to evade the duties imposed by RCW 18.86.030 by arguing that accepting AVH's position would mean that "a broker would be deemed to have rendered real estate services to anyone in the world," or with less hyperbole, maybe just "to all persons who happen to read the broker's listings," and that "[i]f Appellant's misconceptions were true, real estate brokers would be required to provide pamphlets on real estate agency law to each and every person who reads the broker's listings." (Appellees' Opening Brief at 16.) The problem with this argument is it is not true at all. Under RCW 18.86.030(1)(f), a broker has to provide a pamphlet on the law of real estate agency to "to all parties to whom the broker renders real estate brokerage services, *before the party signs an agency agreement with the broker, signs an offer in a real estate transaction handled by the broker, consents to dual agency, or waives any rights, under RCW 18.86.020(1)(e), 18.86.040(1)(e), 18.86.050(1)(e), or 18.86.060(2)(e) or (f), whichever occurs earliest.*" RCW 18.86.030(1)(f) (emphasis added). In other words, there is a relatively narrow subset of persons, described in the statute, to whom a broker is required to provide a pamphlet on the law of real estate agency.

The Court's review of legislative history is appropriate where legislative intent is not apparent from the language of a statute. *State v.*

Komok, 113 Wn.2d 810, 815, 783 P.2d 1061, 1063 (1989). AVH respectfully submits that RCW 18.86.030(1) is clear in imposing baseline duties that a broker owes to all parties in a transaction. *See* RCW 18.86.030(1) (listing duties owed “[r]egardless of whether a broker is an agent”) (emphasis added). To the extent the Court deems it appropriate to consider the legislative history relied upon by the Johnson Parties, however, it only serves to confirm AVH’s position that the Johnson Parties owed duties to AVH under RCW 18.86.030(1). “Certain duties *apply to licensees generally* when performing real estate brokerage services as an agent, including the duty to:

- exercise reasonable skill and care;
- deal honestly and in good faith; ... [and]
- disclose all material facts known by the licensee and not easily ascertainable to a party”

WA F.B. Rep., 2013 Reg. Sess. S.B. 5352 at 2 (emphasis added); *see also* RCW 18.86.030(1) (again, identifying those minimum duties owed regardless of whether a broker is serving as an agent).

Furthermore, RCW 18.86.030(1) makes it explicit that these statutory duties *may not be waived*. The Johnson Parties cannot escape liability because the PSA states that they made no representations or warranties concerning the fitness of the Property for AVH’s intended use,

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as the Johnson Parties suggest. RCW 18.86.030(1); (*see* Appellees' Opening Brief at 21; CP 63.)

E. Johnson Need Not Have “Peculiar” Knowledge Nowhere Found in any Public Media to be Liable.

The Johnson Parties cite *Colonial Imports, Inc. v. Carlton Nw., Inc.*, 121 Wn.2d 726, 853 P.2d 913 (1993), to suggest that a duty to disclose does not arise unless facts are peculiarly within the knowledge of one person and could not readily be obtained by the other. (Appellees' Opening Brief at 20-21.) That is only one situation giving rise to a duty of disclosure under Washington law, however, as the Court recognized in *Colonial Imports*. A duty to disclose also arises, for example, ““where a seller has knowledge of a material fact not easily discoverable by the buyer,”” or where disclosure is necessary to prevent a party's partial or ambiguous statement of the facts from being misleading. *Colonial Imports, Inc.*, 121 Wn.2d at 731-32 (quoting *Favors v. Matzke*, 53 Wn. App. 789, 796, 770 P.2d 686 (1989)). Facts need not be solely, or peculiarly known by a broker for a duty of disclosure to arise.

Johnson also cites to *Central Puget Sound Regional Transit Auth. v. Miller*, 156 Wn.2d 403, 129 P.3d 588 (2006) (en banc), to argue that the State Supreme Court has determined that a property owner “is only entitled to public notice on Sound Transit's website of a potential acquisition.”

(Appellees' Opening Brief at 31.) In *Miller*, the Washington Supreme Court simply held that notice of a public meeting by publication on Sound Transit's website satisfied RCW 35.22.288. That statute, not applicable here, allowed notice by any processes that Sound Transit determined would satisfy the intent of the statutory notice requirement. *Miller*, 156 Wn.2d at 413-16. Furthermore, the Court also noted in *Miller* that the complaining parties in that case could not convincingly argue they lacked notice because there was considerable evidence that they were involved in the site selection process for many years. *Id.* at 413. Obviously, that is not at all the case here.

F. The Undisputed Fact that AVH was Assured that There Were No Pending or Threatened Condemnation or Similar Proceedings Matters.

What we have in this case, is a seller's broker presenting a written representation to a buyer that there were "no pending or threatened condemnation or similar proceedings affecting the Property," while he knew the representation was false, and who talked to the seller specifically about whether to disclose the problem, yet stayed silent, allowing the unwitting buyer to acquire a property the buyer was never going to be able to use.

The Johnson Parties argue that AVH treats the express representation as a "get out of jail free card," and that *WGW USA, Inc. v. Legacy Bellevue 530, LLC*, No. 72939-0-I, 2015 WL 9462096 (Wash. Ct.

App. Dec. 28, 2015) (unpublished) “counsels against this.” (Appellees’ Opening Brief at 33.) Do not be misled; in *WGW USA, Inc.*, there was *no express representation* like the one provided to AVH in this case that there were no pending or threatened condemnation proceedings.¹¹

The Johnson Parties further argue that the express, false representation in the PSA “concerning one possible impact does not excuse the Appellant from investigating other possible impacts to the Property.” (Appellees’ Opening Brief.) But the express representation specifically concerned the precise defect this whole case is about. What the Johnson Parties are suggesting is that express assurances in a contract, promising that a particular defect does not exist, do not affect in any way a buyer’s need or duty for further investigation into that same defect. That is an unreasonable proposition, and AVH respectfully submits, is also contrary to the Washington law AVH has presented to the Court.

¹¹ Relying on *WGW USA, Inc.*, the Johnson Parties also make an argument, for which there is no evidence or support, in reliance on improper, speculative expert testimony that the court in *WGW USA, Inc.* excluded. *Compare* (Appellees’ Opening Brief at 34), *with WGW USA, Inc.*, 2015 WL 9462096, at *3. The Court should disregard entirely this argument concerning purported differences in incentives to investigate between lessees and buyers.

G. RCW 18.86.040 Does Not Immunize Johnson’s Violation of RCW 18.86.030(1).

The Johnson Parties argue that Johnson was “duty-bound not to disclose Seller’s confidential information.” (Appellees’ Opening Brief at 40.) Johnson cites to RCW 18.86.040(1)(a) and RCW 18.86.040(1)(d) in support of this argument. (*Id.*) But what information exactly “from or about the seller” are the Johnson Parties claiming to be “confidential”? *See* RCW 18.86.040(1)(d). Everywhere else throughout their brief they argue that the threat of condemnation was pervasively public. And it is the threat of condemnation or similar proceedings that AVH asserts Johnson was duty-bound to disclose.

Under RCW 18.86.040(1)(a), a seller’s agent must also be loyal to the seller and not take action that is adverse or detrimental to the seller’s interest, but that does not ameliorate the duties imposed by RCW 18.86.030(1). Furthermore, implicit in the Johnson Parties’ argument is an admission that the threatened condemnation here was material, *i.e.*, the Johnson Parties appear to be arguing that disclosure would have been “adverse or detrimental to” LaClare’s interest in the transaction. *See* RCW 18.86.040(1)(a).

H. The CPA is not Limited to Unsophisticated Consumers.

The Johnson Parties argue that the purpose of the CPA is “to protect Washington *consumers*” and that “[t]he CPA should not be used by sophisticated parties in commercial real estate transactions to shift risk inherent in their investment.” (Appellees’ Opening Brief at 46-48.) First of all, this is not a case about shifting risk, it is a case about holding a broker responsible for engaging in unfair and deceptive acts and violating duties of disclosure under Washington law and RCW 18.86.030(1). Second, the CPA does not refuse remedies to the sophisticated, or parties to a million dollar transaction. *E.g., Behnke v. Ahrens*, 172 Wn. App. 281, 292, 294 P.3d 729 (2012).

The Consumer Protection Act does not exclude millionaires from its remedies. The act provides that “Any person who is injured in his or her business or property by violation” of the Consumer Protection Act may bring a civil action to recover damages. RCW 19.86.090. The act is to be liberally construed. RCW 19.86.920. “Any person” means “any person.”

Id.

I. AVH was Proximately Damaged by the Johnson Parties’ Unfair and Deceptive Acts; the Johnson Parties’ Argument to the Contrary is Frivolous.

The Johnson Parties falsely argue that AVH “suffered no damage,” and note that Sound Transit ultimately paid more for the Property than AVH

paid to LaClare.¹² (Appellees’ Opening Brief at 10, 46.) The evidence shows, however, that AVH has multiple categories of recoverable damages proximately caused by Johnson’s unfair and deceptive acts. (CP 266-69, CP 668-680, CP 681-82, CP 683-87, CP 688-95.) Johnson marketed the Property touting its potential rental income, and leasing the Property was AVH’s intention all along, as the Johnson Parties knew. (CP 664-67; CP 620; CP 718-19.) Johnson failed to disclose the threat of condemnation to AVH even though he admitted that, under the circumstances, “we can’t sign a long-term lease.” (CP 116.) AVH suffered lost rent, incurred closing costs, incurred financing costs for the Property, paid taxes on the Property, paid mandatory inspection, servicing, repair and insurance costs and was forced to incur utilities charges, in addition to unreimbursed legal expenses (independent of its fees and costs in this lawsuit) incurred to address the forced sale to Sound Transit. (*E.g.*, CP 266-69.)

Furthermore, unlike with respect to the claims AVH asserted against LaClare, the PSA’s limitation on “consequential damages” has no impact

¹² The Johnson Parties argue that AVH mischaracterizes the Johnson Parties’ position as to the CPA claim and assert that they contest “whether Appellant suffered an injury in fact for which Johnson was the proximate cause.” (Appellees’ Opening Brief at 43.) This is not an argument the Johnson Parties made to the trial court on summary judgment. (*See* CP 389-91.)

whatsoever on AVH's claims, or recoverable damages against the Johnson Parties. (*See* CP 61.)

II. CONCLUSION

AVH respectfully requests the Court to reverse the trial court's June 30, 2017 order (CP 862-64) insofar as it granted the Johnson Parties' Motion for Summary Judgment and erroneously dismissed AVH's misrepresentation and CPA claims, and remand this case for further proceedings.

Respectfully submitted, this 28th day of February, 2018 at Seattle, Washington.

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DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the state of Washington that on the 28th day of February, 2018, I caused to be served the foregoing document on counsel for Defendant/Appellee, as noted, at the following addresses:

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DATED this 28th day of February, 2018 at Seattle, Washington.

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