

NO. 327451-III

Grant County Cause No. 12-2-000314-5

COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION III

FILED

JUL 13 2015

THE ESTATE OF SUSAN HUNTER,

COURT OF APPEALS
OF WASHINGTON
STATE OF WASHINGTON
By _____

Appellant,

v.

ALLSTATE INSURANCE COMPANY,

Respondent/Cross-Appellant.

RESPONDENT/CROSS-APPELLANT'S REPLY BRIEF

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ORIGINAL

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I. RESPONDENT/CROSS-APPELLANT REPLY BRIEF

1. Introduction

Plaintiff is not entitled to file a second lawsuit against the same defendant, under the exact same facts and circumstances, seeking the same recovery as the first suit based upon an alleged, inadvertent discovery violation that occurred post-litigation and was never adjudicated in the first suit. To hold otherwise would lead to potentially limitless satellite litigation and absurd results. *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn. 2d 299 at 356 (1993). Accordingly, the trial court properly dismissed the second suit, but erred in refusing to sanction Plaintiff under CR 11.

Allstate now seeks sanctions for this frivolous appeal pursuant to RAP 18.9. Sanctions are appropriate because plaintiff's counsel admitted that the two actions "overlap," that there is "only one relief sought," and the second lawsuit was filed to "avoid procedural difficulty."

MR. KINKLEY: I don't think that -- if you don't have a relationship with an insurance company that you can have an insurance company fairness violation. Well, that's fine but -- so that's the problem, that '07 has to be decided whether there's coverage. So, there is that overlap. If you want us to amend that Complaint to say all this other stuff needs to be decided in '07, that to me, is not the important part. Maybe it's sloppy drafting, I don't know. The important part -- well, I have to take that back. I know why we drafted it that way. **We had some concerns that the '07 case would go ahead**

and go to trial, be dismissed, and we would be in the Court of Appeals on that so we needed this case to continue in the way that it would. But, I don't disagree that there's some overlap. I don't disagree that there's only one relief. I also point out in my own defense that I did move to consolidate so that we could bring them together and the issues that are in '012 are '012 IFCA issues and that's really all we're asking for. We're saying very, very, very simply that when -- who filed the false affidavit in '09?

Verbatim Report of Proceedings, February 25, 2013, September 9, 2013, January 8, 2014, June 2, 2014, Volume I at 61-62 (emphasis added).

THE COURT: Okay. **So, the problem here -- you filed the second lawsuit to avoid the -- the procedural difficulty. So, let's just put it that way.**

MR. KINKLEY: **Right -- and timing and procedural.** And like I mentioned before, it's tough to get a hearing over here. And if you notice in this file, in '07, we filed a Motion to Amend the Plaintiff's Complaint to include these later occurring actions. Technically it should have been a Motion to Supplement the Pleadings. When something occurs after the filing of the Complaint, that in itself is a new cause of action, the best practice -- what I do in federal court is move to supplement. Sometimes we'll do what we did here is file a new lawsuit and move to consolidate. And we moved to consolidate right away, as soon as we filed the second Complaint. And both Defendants -- we moved to amend and both Defendants opposed that.

Id at 155-156 (emphasis added).

The trial court did not err in dismissing the 2012 lawsuit because Plaintiff sought the exact same relief against Allstate in the 2012 lawsuit that she sought in the 2007 lawsuit. No Washington court has held that the

IFCA can apply to a claim denial before IFCA became effective. Similarly, no Washington Court has held that conduct after denial of coverage and after inception of litigation can form the basis for a claim under the IFCA.

On the other hand, there is a wealth of authority, at both the state and federal level, which holds post-litigation conduct cannot form the basis for an IFCA violation. Plaintiff is asking this Court to make new law by holding that an IFCA claim can arise during post-denial and post- litigation. This would directly contradict the following authority: *Guijosa v. Wal-Mart Stores*, 144 Wn.2d 907, 921 (2001); *Blake v. Fed. Way Cycle Ctr.*, 40 Wn. App. 302, 312 (Wash. Ct. App. 1985); *Stegall v. Hartford Underwriters Ins. Co.*, No. 4:08CV3252, 2009 U.S. Dist. LEXIS 2690, (W.D. Wash. January 14, 2009); *Bronsink v. Allied Prop. & Cas. Ins. Co.*, No. C09-751MJP, 2010 U.S. Dist. LEXIS 56159 (W.D. Wash. June 8, 2010); *Navigators Ins. Co. v. Nat'l Union Fire Ins. Co.*, No. C12-13-MJP, 2013 U.S. Dist. LEXIS 109903 (W.D. Wash. August 5, 2013); *Southridge Partnership v. Aspen Speciality Insurance Company*, No. C08-0931-JCC, 2009 WL 1175627 (W.D. Wash. May 1, 2009).

Accordingly, this Court should AFFIRM the trial court's dismissal of Grant County Superior Court Cause No. 12-2-00314-5, AFFIRM the

trial court's refusal to consolidate the actions, REMAND Respondent's motion for sanctions under CR 11 to the trial court, and sanction Plaintiff/Appellant under RAP 18.9 for filing a frivolous appeal.

2. Dismissal Was Proper Because Plaintiff's 2012 Lawsuit is Duplicative and Frivolous.

The doctrine of claim splitting bars a party from subsequent litigation when the same controversy has already been sued upon. *Single Chip Systems Corp. v. Intermec IP Corp.*, 495 F. Supp. 2d 1052, 1058 (S.D. Cal. 2007). Claim splitting is prohibited in Washington, and protects the Defendant against being forced to defend two causes of action under the same set of facts and circumstances. *Landry v. Luscher*, 95 Wn. App. 779 (1999).

Landry held that dismissal is appropriate where a subsequent action is identical with a prior action in four respects: (1) persons and parties; (2) cause of action; (3) subject matter; and (4) the quality of the persons for or against whom the claim is made. *Landry* at 783.

Where the relationship between the parties is adversarial, the quality of the persons to the suit are identical. *Landry*, *supra*, at 785. In considering whether the subject matter is the same, the critical factors are the nature of the claim or cause of action, and the parties. *Hayes v. City of*

Seattle, 131 Wn.2d 706, 712, 934 P.2d 1179, 943 P.2d 265 (1997).

In the present case, Plaintiff's 2012 lawsuit is wholly duplicative of her 2007 suit. It is undisputed that both suits name Plaintiff Estate of Susan Hunter and Defendant Allstate. It is undisputed that the relationship between the parties is adversarial. It is undisputed that Plaintiff sued Allstate under identical theories of recovery – namely breach of contract, bad faith, violation of the CPA, and violation of the IFCA. CP 1569-1577; CP 1-18. Accordingly, it is undisputed that elements 1-3 of the *Landry* test are satisfied.

The causes of action in both suits are also identical. Plaintiff's second suit substantially impaired the rights of Allstate because it forced Allstate to defend against a second, duplicative suit and eventually this appeal. Both actions arose from the same subject matter, contained the same factual allegations, and the same causes of action. Plaintiff sued for infringement of the same right in both actions – the rights she alleged she was due under the policy. Finally, it is undisputed that both lawsuits arose from the same transactional nucleus of facts. Accordingly, the causes of action were identical and *Landry* mandated dismissal.

Plaintiff's 2012 lawsuit is wholly duplicative and barred by Washington law regarding claim splitting. It wastes limited judicial time

and resources. Accordingly, dismissal was proper and must be affirmed on appeal.

3. Because Filing the Second Suit Was Frivolous, the Trial Court Erred in Refusing to Sanction Plaintiff Under CR 11.

The purpose behind CR 11 is to deter baseless filings. *MacDonald v. Korum Ford*, 80 Wn. App. 877 (1996). CR 11 contemplates filings that lack factual or legal basis and filings made for improper purposes. *Bryant v. Joseph Tree*, 119 Wn.2d 210, 220, 829 P.2d 1099 (1992). CR 11 was designed to reduce delaying tactics, procedural harassment, and mounting legal costs. *Id* at 219 (quoting 3A L. Orland, Wash. Prac., Rules Practice § 5141 (3d ed. Supp. 1991)).

A trial court may impose sanctions for a baseless filing if it finds the attorney who signed and filed the pleading failed to conduct a reasonable inquiry into the factual and legal basis of the claims. *Bryant*, 119 Wn.2d at 219-20. An objective standard is applied, and the court must ask whether a reasonable attorney could believe his or her actions were factually and legally justified. *Id*; See also: *Madden v. Foley*, 83 Wn. App. 385, 390, 922 P.2d 1364 (1996).

When Plaintiff filed Cause No. 12-2-00314-5, she violated CR 11 because the suit was wholly duplicative and, therefore, frivolous. Plaintiff

sued under the exact same theories of recovery on the same facts that were being litigated in the 2007 suit after receiving an unfavorable ruling on her IFCA claim in the initial lawsuit. CP 1980-1981. Plaintiff's Motion to Consolidate, filed on June 12, 2013, recognizes that common questions of law and fact predominate between the two suits. CP 2648-2650.

Under these circumstances, Plaintiff's filing of the 2012 action had no factual or legal base and improperly caused Allstate to defend a frivolous suit. Allstate's legal costs continue to mount through the present appeal. No reasonable attorney could believe that filing a duplicative second suit based upon an alleged discovery violation that was never adjudicated in the prior action has a sound factual or legal basis.

Plaintiff makes no attempt to defend or explain the extensive quotations from oral argument before the trial court cited in Allstate's Respondent brief showing that not only do the two actions overlap, they are identical. These quotations are direct citations to the Verbatim Report of Proceedings on Allstate's Motion for Summary Judgment and Dismissal, and Plaintiff's Motion to Consolidate. The quoted remarks from Plaintiff's counsel show that the second suit was filed improperly. When asked by the trial court whether Plaintiff was seeking exactly the same relief as the 2007 lawsuit, Plaintiff's counsel simply responded "Yes, that's the

overlap.” VRP at 67.

In fact, Plaintiff’s counsel repeatedly admitted to the trial court that the two actions overlap, and that the second lawsuit was improperly filed:

THE COURT: As I read the -- as I read the Complaint though, **a lot of the relief that’s sought in this Complaint is the same relief that is sought in the first Complaint.**

MR. KINKLEY: **It does overlap** and it should be consolidated for that reason, but we have to make those conditions precedent.

VRP at 60-61 (emphasis added).

THE COURT: Okay. **But it’s true isn’t it; you can’t just bring two lawsuits?**

MR. KINKLEY: I -- we get one relief, we get one determination. Those should be consolidated. If you’re not gonna [sic] consolidate, you should require us to amend the policy and strike all those things and maybe we wait for ’07 to be decided.

VRP at 66 (emphasis added).

MR. KINKLEY: My -- my point is this -- that **I don’t disagree that there’s some overlap.** We have conditions precedent to make an IFCA claim, and so the Complaint included those with the anticipation and expectation that ’07 and ’012 would be joined or that ’07 would determine those things. I mean, there’s really -- there’s -- really, the question of coverage is an ’07 question. Once you determine that -- just a second, David. Once you determine that -- if you determine it in the favor of the Plaintiff, then we turn around and we say in ’012, that’s already been determined. We don’t need to make another motion.

THE COURT: Okay.

MR. KINKLEY: I mean, and that's the idea of it and I don't know, maybe there's a better artful way to do it than we did it, but that was the intent. Just one second. Yeah, there's -- let me just say it though for you. Yes, I understand. There is some --

THE COURT: The first IFCA is premised upon actions the company took -- Allstate took between '04 and '06.

MR. KINKLEY: That's right.

THE COURT: And this one is since the inception of the litigation, which I think was in '09. Is that right?

MR. TRUJILLO: It arose in March of '09.

MR. KINKLEY: The litigation arose in -- just a second. This litigation arose in '07 but the actions actually first -- the ones I highlighted for you were '09.

VRP at 68-69 (emphasis added).

MR. KINKLEY: Then you have common law bad faith. Then you have Consumer Protection Act violation case. And now after December of '07, you have an IFCA case.

THE COURT: All right.

MR. KINKLEY: Those are the four parts that you will see nowadays in any bad faith, failure of coverage to provide coverage case.

THE COURT: Okay.

MR. KINKLEY: And all we're doing is pulling in '09 facts and '09 violation into the '07 case. And it makes sense to hear them both together.

THE COURT: All right. Thank you, Mr. Kinkley. Mr. Leid.

VRP at 164-165.

Furthermore, Plaintiff's argument suggests that the discovery violation may have been properly actionable under CR 11, but not by bringing a second suit:

THE COURT: Well, I suppose what we're gonna [sic] hear from Mr. Leid is that may be true, but you can't have -- you can't recognize a remedy for something that's procedural in nature and where the -- or the Supreme Court has already provided a remedy. In other words, this would be a discovery violation. There is a -- I'm assuming that's what we're gonna [sic] hear from Mr. Leid.

MR. KINKLEY: Just because it's a *Fisons* and discovery violation doesn't make it a violation of something else as well. And the difference is the remedies.

THE COURT: Well, okay. Go ahead.

MR. KINKLEY: Yeah, I understand that argument. And I mean, something can be a discovery violation --

THE COURT: Right.

MR. KINKLEY: -- it can be a CR11 violation. It's -- I mean, it's conduct that, you know, the Court could sua sponte take action.

THE COURT: Right. But where there's a -- where there's a conflict between -- between the legislature and the Supreme Court on a procedural matter, the court rules always control, doesn't it?

MR. KINKLEY: I would -- I would think so. But it just depends on the issue --

THE COURT: Okay.

MR. KINKLEY: -- and whether it's substantive. But there's no conflict here.

VRP at 159-160.

MR. KINKLEY: All right. So, the point is this -- we have not split the causes of action. We have two cases that require some of the same facts and so they should be consolidated.

THE COURT: Okay.

VRP at 161.

The trial court also explicitly stated that the two suits involve a lot of the same facts:

THE COURT: This is one of the things that bothers me about this motion. I mean, I -- it appears to me -- and I'll hear from Mr. Leid. I, of course, will keep an open mind, but it appears to me that if you look at Rule 42, yeah, these actions **involve a lot of the same facts**, so it makes a lot of sense to join these, but if I were to do that, would I not essentially be in substance overturning or overruling the previous Order, which denied amendment? Was I -- was I the judge who did that?

VRP at 162 (emphasis added).

This court need look no further than these citations to the record to determine that the 2012 lawsuit was frivolously filed and the trial court

erred in failing to sanction Plaintiff under CR 11.

Importantly, Plaintiff filed to consolidate after Allstate filed its Motion to Dismiss Cause No. 12-2-00314-5 on March 9, 2012, seeking CR 11 sanctions. CP 36-48. In that Motion, Allstate argued that the suit of *Hunter v. Allstate*, Cause No. 12-2-00314-5, had no merit whatsoever, and must be dismissed. *Id.* Accordingly, Plaintiff was on notice that her action was frivolous yet chose to file anyway. Once again, because no reasonable attorney would have filed this duplicative and frivolous second suit, the trial court erred in failing to sanction Plaintiff and Allstate's appeal for reinstatement of CR 11 sanctions should be granted.

Just as no reasonable attorney would file the 2012 suit in this case, no reasonable attorney would appeal its dismissal. Allstate's costs in defendant the 2012 suit and this appeal continue to mount. Accordingly, Allstate requests this Court award sanctions pursuant to RAP 18.9.

4. Plaintiff's Arguments are Inapposite and Unpersuasive.

A. *Evergreen Collectors & Panag* Are Inapposite.

Plaintiff cites *Evergreen Collectors v. Holt*, 60 Wn. App. 151, 803 P.2d 10 (1991) for the proposition that the holding in *Blake v. Fed. Way Cycle Ctr.*, 40 Wn. App. 302, 312 (Wash. Ct. App. 1985) that filing a lawsuit takes ensuing conduct outside the sphere of trade and commerce is

inapplicable to insurers. *Evergreen* concerned actions by a collection agency during litigation which constituted per se unfair conduct under RCW 19.16.100 *et seq.*, or the Collection Agency Act (CAA). *Evergreen* at 155. *Evergreen* says nothing about insurers, WAC provisions regulating same, nor does it say anything about the IFCA. It certainly does not hold that post-litigation conduct by an insurer can give rise to a claim under the IFCA.

In *Evergreen*, plaintiff violated RCW 19.16.250(14) by representing to defendants that they owed more than their initial obligation by the addition of attorneys' fees. Plaintiff sued defendants for an amount due, the parties negotiated a settlement, but a dismissal was never entered. *Evergreen*, 60 Wn. App. 151 at 153-154. Thereafter, plaintiff sought trial to "recoup its costs" and told defendants they would have to pay an additional \$200 if they went to trial for plaintiff's attorneys' fees. The court held that "Evergreen's egregious conduct violated [the CAA]." *Id* at 156.

Evergreen is easily distinguishable from the case at bar. Most obviously, the per se violation of the CAA occurred when plaintiff attempted to extort defendants during litigation. This was an indefensible action under RCW 19.16.250 (14) and gave the court no choice but to hold

in favor of defendants based upon plaintiff's "egregious" conduct. Here, Plaintiff Hunter is alleging a WAC violation based upon the filing of a declaration by Allstate's attorney and the production of documents. This conduct is no more than an alleged discovery violation, and one that was never adjudicated by the trial court. This is not an action specifically prohibited by statute, and it's a far cry from the indefensible extortion contemplated by *Evergreen*.

Similarly, *Panag v. Farmers Insurance Company*, 166 Wn.2d 27, 204 P.3d 885 (2009) also concerned interplay between violations of the CAA and per se violations of the CPA. *Panag* stands solely for the proposition that a plaintiff does not lack standing under the CPA just because a plaintiff is not in contractual privity with the defendant. *Id.* This case did not involve insurers, WAC provisions governing same, nor did it involve application of the IFCA. This case also does not hold that post-litigation conduct by an insurer can give rise to a claim under the IFCA.

B. *RSUI & Garoutte Are Easily Distinguishable.*

The court in *RSUI Indemnity Company, Inc. v. Vision One, LLC*, No. C08-1386RSL, 2009 WL 5125420 (W.D. Wash., Dec. 18, 2009) held that post-denial conduct could be evidence of bad faith.

It explicitly did not contemplate whether litigation conduct can be a basis for any extra-contractual claim. Furthermore, there is no discussion regarding whether post-denial or post-litigation conduct can give rise to a claim for violation of the IFCA. Instead, the court merely reiterated what we already know – that an IFCA claim can only be sustained if the denial occurred after enactment of the statute. *Id* at 6.

Plaintiff also cites *Garoutte v. American Family Insurance Company*, No. C12-1787 BHS, 2013 WL 3819923 (W.D. Wash. July 23, 2013) for the proposition that post-litigation conduct can give rise to a claim for violation of the IFCA. In *Garoutte*, the court granted summary judgment on plaintiff's IFCA claim because, during litigation, American Family stopped paying additional living expenses (ALE).

However, *Garoutte* is not favorable to Plaintiff Hunter because the court held that American Family's failure to pay expenses was a denial of payment of benefits, and that the combination of forcing plaintiff to submit to appraisal in violation of the WAC and a denial of payment of benefits violates the IFCA. *Id* at 14. Accordingly, this case actually contradicts Plaintiff's position that a violation of the WAC alone is independently actionable under the IFCA. *Garoutte* held that a denial of coverage or payment of benefits is required to sustain an IFCA claim. *Id*.

More importantly, American Family's conduct in refusing to pay further ALE benefits after litigation commenced is not litigation conduct, but merely something that occurred post-litigation. This distinction is important. The decision to stop paying ALE was a regular claims handling action, but it is not litigation conduct. Contrast what occurred in the case at bar where an attorney for Allstate made an inadvertent discovery disclosure – the two acts are readily distinguishable.

As Plaintiff herself contends, RCW 48.01.030 mandates that the duty of good faith is ongoing. Appellant's Reply Brief at 7. In *Garoutte*, the court found that American Family violated that duty and that the resulting denial of payment of benefits, although it occurred post-litigation, was sufficient to sustain a claim under the IFCA.

Garoutte does not stand for the proposition that Plaintiff Hunter should be allowed to bootstrap a claim for violation of the IFCA onto the litigation conduct of Allstate's attorney in an inadvertent, alleged discovery error. Once again, Plaintiff cannot cite any authority to support the proposition that litigation conduct can be the basis for a claim under the IFCA because no such authority exists.

C. Plaintiff's Attempts to Distinguish Federal Authority Are Unpersuasive.

Plaintiff attempts to dismiss four consecutive federal court cases directly on point holding that post-litigation conduct cannot form the basis of an IFCA violation by stating that this Court is “Erie-bound.” Appellant’s Reply Brief at 19. This is precisely true, and exactly what all federal courts have done that have addressed this issue because there is no Washington Supreme Court precedent, nor any other Washington State precedent holding that post-litigation conduct can form the basis of a “separate and distinct” claim for violation of the IFCA.

Plaintiff tries to distinguish the string of unfavorable federal cases by arguing that they all concern valuation disputes and not coverage disputes. How this makes a difference, however, is unclear. Insurers are under the same statutory and common law obligations regardless of the nature of the dispute with their insureds. RCW 48.01.030.

The inescapable reality for Plaintiff is that after litigation commences, the Federal Rules of Civil Procedure govern, not the administrative code. *Stegall v. Hartford Underwriters Ins. Co.*, No. 4:08CV3252, 2009 U.S. Dist. LEXIS 2690, (W.D. Wash. January 14, 2009) at 6. Plaintiff’s argument that the WAC provides a new cause of action under the IFCA based upon an alleged discovery error occurring within the litigation of a first party case effectively wrests control of that case from the

trial judge. It ignores the court rules and leads to untenable results as explained below.

D. Plaintiff's Argument for New Law Would Lead to Absurd Results.

Even if *Evergreen* somehow abrogates *Blake* as Plaintiff suggests, Plaintiff's argument that post-denial and post-litigation conduct by an insurer's attorney can form the basis for a violation of the IFCA would lead to absurd results. If Plaintiff's argument is accepted by this Court, every alleged CR 11 or CR 37 violation in a first party bad faith case would create disfavored satellite litigation. "Requests for sanctions should not turn into satellite litigation or become a 'cottage industry' for lawyers." *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn. 2d 299 at 356 (1993).

The remedies for discovery violations are contained in CR 37. The remedies for harassing, frivolous, or ill-founded litigation conduct are contained in CR 11. Plaintiff is asking this Court to ignore these well-settled court rules and create law allowing "new and distinct" IFCA violations based upon post-denial, litigation conduct by an insurer's attorney.

Following Plaintiff's theory to its logical conclusion, every alleged

CR 11 or CR 37 violation would create satellite litigation with entirely new extra-contractual claims not simply limited to violation of the IFCA. This was clearly not the legislature's intent in crafting the IFCA, nor the voter's intent in enacting the IFCA. It would create precisely the sort of satellite litigation disapproved by *Fisons*. It would needlessly clog the court systems, create a "cottage industry" for lawyers, and lead to absurd and unjust results. Accordingly this Court should affirm the dismissal of Plaintiff's 2012 suit, and refuse to recognize Plaintiff's claim for a "new and distinct" violation of the IFCA based upon post-litigation conduct.

E. Plaintiff's "Exemption" Argument Impermissibly Attempts to Shift Burden

Plaintiff misleads this Court by arguing that Allstate is claiming a "litigation exemption" or that Allstate claims an exemption under RCW 19.86.170. Allstate is not claiming an exemption. As the trial court properly recognized, Allstate is being forced to defend a duplicative, frivolous second suit.

Plaintiff's citation to cases regarding the narrow construction of claimed exemptions are an attempt to burden-shift and are inapplicable to this appeal. Plaintiff bears the burden of establishing a legally cognizable claim under the IFCA. Because Plaintiff failed to do so at the trial court

level, the trial court did not err in dismissing the 2012 suit. Plaintiff's argument regarding exemptions is wholly inapposite. Accordingly, this Court should disregard it.

5. Conclusion

Plaintiff's claim for any violation of the IFCA, RCW §48.30.015, is untenable as a matter of law because the statute is not retroactive. It is undisputed that Allstate denied Plaintiff's claim on April 7, 2006. It is undisputed that the IFCA became law on December 6, 2007, over one and one half years after denial of Plaintiff's claim. While Washington State Courts have yet to rule on the IFCA, Federal Courts interpreting the same have unanimously held that the IFCA is not retroactive in application, nor can post-denial conduct form the basis of an IFCA violation.

Nevertheless, Plaintiff argues for a "prospective" application of the IFCA, based upon litigation conduct that occurred nearly two years after litigation commenced, and almost three years after Plaintiff's claim was denied. There is no Washington authority to support this position and every federal court to consider the issue has squarely rejected this argument.

It is undisputed that the conduct upon which Plaintiff premises her claim for "new and distinct" violations of the IFCA occurred during the pendency of the 2007 suit, Grant County Cause No. 07-2-00020-4.

Accordingly, under Washington and federal law, Plaintiff has no claim for violation of the IFCA where the alleged conduct giving rise to such a claim occurred post-litigation.

Plaintiff's 2012 lawsuit is wholly duplicative and the trial court properly dismissed it under the doctrine of claim splitting. The trial court did not err in refusing to consolidate the cases because all of Plaintiff's causes of action remain to be adjudicated in the 2007 action. Both the initial 2012 suit and this appeal were frivolous as a matter of law. The trial court erred by refusing to sanction Plaintiff for filing a duplicative, frivolous suit. Accordingly, this Court should AFFIRM the trial court's dismissal of Grant County Superior Court Cause No. 12-2-00314-5, AFFIRM the trial court's refusal to consolidate the actions, REMAND Respondent's motion for sanctions under CR 11 to the trial court, and sanction Plaintiff/Appellant under RAP 18.9 for filing a frivolous appeal.

DATED this 8th day of July, 2015.

Respectfully Submitted,

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