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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By: _____

No. 336140

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

DERALD HAUCK and NOEL MOON,

Appellants,

v.

WILLIAM and DIANA BARR, JEANNINE BURNS, and SOLEIL REAL
ESTATE,

Respondents.

REPLY BRIEF OF APPELLANTS

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A. ARGUMENT

1. Appellant Moon's Standing.

The trial court dismissed Moon's claims, finding that she did not have standing to pursue any claims. Moon has not challenged this finding and has not appealed any of her claims. Only Hauck has appealed.

2. Hauck Presented Sufficient Evidence to Create a Genuine Issue of Fact as to All Elements of Fraudulent Concealment.

A claim for fraudulent concealment exists when: (1) the residential dwelling has a concealed defect; (2) the seller has knowledge of the defect; (3) the defect presents a danger to the property, health, or life of the purchaser; (4) the defect is unknown to the buyer; and (5) the defect would not be disclosed by a careful, reasonable inspection by the buyer. Alejandre v. Bull, 159 Wn.2d 674, 689, 153 P.3d 864 (2007).

i. Urine and Feces Were Concealed Beneath Brand New Carpet.

The first element requires that the residential dwelling have a concealed defect.” Alejandre, 159 Wn.2d at 689. Respondent Barr challenges this element. *Br. of Resp't (Barr)* at 10. The home was sold with brand new carpet, which was purchased by Barr. CP at 381. Hauck and Moon later discovered that animal urine and feces had been hidden beneath the new carpeting. CP at 427. The animal excrement is clearly a concealed defect.

ii. Respondents Had Knowledge of the Concealed Defect.

The second element requires that the seller have knowledge of the defect. Alejandre, 159 Wn.2d at 689. A seller's knowledge of a concealed defect can be proved by *circumstantial evidence*. Sloan v. Thompson, 128 Wn.App. 776, 787, 115 P.3d 1009 (2005)(emphasis added).

a. Respondent Barr Had Knowledge of the Defect.

Respondent Barr claims that Appellant Hauck cannot prove that the Barrs knew about the "strong pet urine smell." *Br. of Resp't (Barr)* at 10. When Mr. Barr was asked why he put an air freshener in the home, he stated, "I smelled an odor." CP at 384. When asked if it was an animal urine smell, he stated, "It could have been." Id. These statements alone show that Barr had, *at minimum*, circumstantial knowledge of the urine smell in the home.

Mr. Barr also walked on the exposed subflooring during his work on the home. CP at 382-83. The flooring he walked on was right beneath the carpet and the pad, which is the flooring that is subject to this litigation. CP at 383. He was in and out of the house after the old carpeting and padding were removed and before the new carpeting was installed. CP at 382-83. Moon took pictures of those floors almost immediately after pulling up the carpets and discovering the hidden urine and feces. CP at 406-08. After observing the urine-and-feces-soaked floors in these

pictures, Barrs' assertion that they had no knowledge of the defect is untenable.

b. Respondent Burns Had Knowledge of the Defect.

Respondent Burns is correct that the general evidentiary standard is clear, cogent, and convincing. See Sloan v. Thompson, 128 Wn.App. 776, 787 (2005). But with respect to this standard, the second element of "actual knowledge can be proved by *circumstantial evidence*." Id. at 787 (citing Burbo v. Harley C. Douglass, Inc., 125 Wn.App. 684, 698, 106 P.3d 258 (2005)(emphasis added).

Burns denies knowledge of the defect. *Br. of Resp't (Burns)* at 16. Witnesses to the conditions during the previous tenancy saw urine and feces all over the carpets and floors. CP at 416, 420. When the tenants left, Barr discovered a "mess," which included filthy, stained carpeting and floors. CP at 375-76. Moon has sworn that Burns told her that she was also in the home prior to it being cleaned and that it was "trashed." CP at 426. Later, when the home was for sale, a few people mentioned to Burns that they could "smell animal" in the home. CP at 397. Burns was also seen spraying air freshener throughout the home when Hauck and Moon picked up the keys (evidence that she knew all along and was continuing to cover it up). CP at 428, 430.

From the above, it is readily apparent that there is clear circumstantial evidence of Burns' knowledge of the defect. Reasonable minds could conclude that the "mess" and "trashed" state of the home included urine and feces all over the floors, which had been prevalent throughout the duration of the previous tenants' tenancy, or that Burns knew the smell emanated from the floors because she had seen the "trashed" state of the home.

Burns also asserts that Hauck had knowledge of the defect because the inspection report revealed a smell. She goes to great lengths to explain that evidence of a defect in the inspection reports in other cases imputed knowledge of the defect upon the buyer. When it comes to her own knowledge, however, she claims complete ignorance, even though people told her firsthand that they noticed the smell.

Hauck is not asking the Court to undertake great leaps of logic here. Common sense and experience dictate that Burns' knowledge can be reasonably inferred. When this Court considers this evidence in the light most favorable to Hauck, it is evident that reasonable minds could reach differing conclusions about the extent of Burns' knowledge of the defect.

iii. The Concealed Urine and Feces Presented a Danger to the Property, Health, or Life of the Purchaser.

The third element requires that “the defect present a danger to the property, health, or life of the purchaser.” Alejandre, 159 Wn.2d at 689. Respondent Barr challenges this element. *Br. of Resp’t (Barr)* at 10-11. Appellant Hauck presented expert opinions that described animal excrement as a manifestly serious and dangerous condition and constituted an environmental hazard. CP at 412-14, 431-33.

Barrs’ contention that Hauck cannot prove that the defect did not affect the property, health, or life of the purchasers, especially where the Appellants have never lived in the property, is unfounded. Whether the Appellants have lived in the property is immaterial and the assertion lacks citation to any legal authority. The defect must merely *present* a danger to the property, health, or life of the buyer. Alejandre, 159 Wn.2d at 689 (emphasis added).

iv. Hauck Had No Knowledge of the Urine and Feces Concealed Beneath the New Carpeting.

The fourth element requires that “the defect is unknown to the buyer.” Alejandre, 159 Wn.2d at 689. Appellant Hauck had no knowledge of the actual urine and feces that was concealed beneath the brand new carpeting. CP at 430. He saw no stains on any carpets, floors, or walls. Id. The actual, tangible urine-and-feces defect was hidden from sight beneath

the new carpeting. The only “evidence” of a defect was a pet urine smell noted in the inspection report.

Despite Respondents’ contentions, discovering evidence of a defect does not automatically foreclose a fraudulent concealment claim. Rather, a claim cannot proceed when a buyer does not make inquiries or establish that inquiries would have been fruitless. Douglas v. Visser, 173 Wn.App. 823, 831, 295 P.3d 800(2013)(citing Puget Sound Service Corp. v. Dalarna Management Corp., 51 Wn.App. 209, 215, 752 P.2d 1353 (1988)). Discovering evidence of a defect merely triggers a duty to inquire further to attempt to discover the root of the problem. In some situations, the extent of the problem can be readily ascertained through such questioning. See Dalarna, 51 Wn.App. at 215. The alternative is that such inquiry does not lead to discovery and that it was or would have been fruitless. See Douglas, 173 Wn.App. at 833 (further inquiry is not necessary where it would have been fruitless).

Burns contends that Hauck argues a proposition that Washington courts have rejected. *Br. of Resp’t (Burns)* at 18-20. Hauck, however, does not seek to push this Court toward an improper extension into the doctrine of constructive fraud by arguing the “true nature of the defect.” Rather, he distinguishes Dalarna and Douglas for further inquiry and fruitlessness purposes, which will be discussed in the next section.

v. **Hauck Conducted a Careful, Reasonable Inspection of the Home Which Failed to Reveal the Hidden Urine and Feces.**

The fifth element requires that “the defect would not be disclosed by a careful, reasonable inspection by the buyer.” Alejandre, 159 Wn.2d at 689. Once a buyer discovers evidence of a defect, they are on notice and have a duty to make further inquiries. Douglas v. Visser, 173 Wn.App. 823, 832, 295 P.3d 800 (2013).

a. *Evidence of Further Inquiry.*

Appellant Hauck clearly conducted further inquiry. Despite Respondents’ assertions to the contrary, Hauck is not asking this Court to ignore any precedent. Rather, Hauck is asking this Court to simply look at the evidence that both the Trial Court and Respondents have ignored.

After the inspection report noted a pet urine smell, Hauck established Moon as the party to conduct their communications. CP at 430. She relayed their concerns to the inspector, Burns, and Barrs via Burns. CP at 425-27. She discussed the inspection report with the inspector multiple times, specifically discussing the pet urine smell. CP at 425-26. Moon relayed concerns about the smell to Burns. CP at 426. She further attempted to find out from the Barrs via Burns what type of wood was under the carpet. Id.

Respondent Barr quotes Interrogatory No. 12, apparently as authority for the proposition that Hauck conducted no further inquiry after the inspection report revealed a pet urine smell in the home. *Br. of Resp't (Barr)* at 11. Yet, the answer to the interrogatory clearly lays out several ways in which further inquiry was done: (1) called the inspector to discuss the findings and pet urine smell; (2) discussed the inspection report with Respondent Burns; and (3) asked Burns what was under the carpet (referring to Appellants directing inquiries toward the Barrs via Burns to find out what type of wood was under the carpet). Barrs' own brief presents facts showing that Hauck and Moon conducted further inquiry.

b. Previous Washington Precedent is Distinguishable from the Present Facts.

The inquiry conducted in this case stands in stark contrast with the absolute failures of the plaintiffs in Alejandre, Dalarna, and Douglas to conduct further inquiry. The Courts have placed fault on buyers for doing ***no inquiry***. Douglas, 173 Wn.App. at 834 (“there is *no evidence that the Douglasses made any inquiries whatsoever* after the inspection”)(emphasis added); Dalarna, 51 Wn.App. at 215 (“There is *no evidence that such inquiries were made...*”)(emphasis added); Alejandre, 159 Wn.2d at 690 (buyers “*failed to conduct any further investigation...*”)(emphasis added).

Respondents assert that Alejandre is controlling. *Br. of Resp't (Barr)* at 15; *Br. of Resp't (Burns)* at 21-23. But the facts in Alejandre do not help Respondents' cases.

The Alejandres never hired an inspector of their own. They relied upon a copy of the bill provided by the seller's septic tank service provider, as well as a property inspection report required by the lending bank. Alejandre, 159 Wn.2d at 679-80. Hauck did not merely rely upon a "copy of a bill" or the assertions of others in reports which he did not specifically authorize. He hired his own inspector to inspect the property. Hauck did his due diligence in hiring an inspector, in stark contrast with the complete failure of the Alejandres to do so.

The Alejandres knew precisely that the septic system's back baffle was not inspected and later the back baffle was the source of the problems. Id. The Alejandres were on notice that the back baffle was not inspected, but conducted *no* further inquiry of it. Id. at 690 (emphasis added). In this case, it is apparent that Hauck conducted further inquiry once on notice of a defect. It is abundantly clear that Hauck did not just accept the findings like the Alejandres did. He made reasonable further inquiry once he was put on notice of evidence of a defect.

In Alejandre, the testimony at trial showed that this part of the septic system was relatively shallow and easily accessible for inspection.

Id. at 690. The Court determined that “careful examination would have led to discovery of the defective baffle and to further investigation.” Id. The Alejandres were on notice that the back baffle had not been completely inspected but failed to conduct any further investigation. Id.

This case does not present an easily accessible defect that was readily ascertainable. In order to discover the defect here, Hauck would have had to do destructive damage to stapled-down carpet by ripping it up. Buyers, however, “[do] not have a duty to perform exhaustive invasive inspection...” Douglas v. Visser, 173 Wn.App. 823, 834 (2013). It is not reasonable to conclude that Hauck had a duty to perform exhaustive, invasive inspection.

c. Further Inquiry Intertwined with Fruitlessness.

Respondents assert that Hauck did no further inquiry and that the argument that further inquiry would have been fruitless does not save his claim.

Dalarna is clear that the “chronic water leakage” in that case was readily ascertainable through questioning because it was “closely related to the apparent surface problems” of water leakage – water stains, cracks, loose tiles. 51 Wn.App. at 215. Likewise, in Douglas, the inspector identified apparent surface problems of rot, which were closely related to

the complained of pervasive, hidden rot. 173 Wn.App. at 831-32. These were visible and readily identifiable problems.

Respondent Burns' assertion that the inspection report "pointed to the source of the defect" is patently false. *Br. of Resp't (Burns)* at 23. She does correctly note, however, that Appellants' follow-up conversations with the inspector included a discussion that the smell could potentially be emanating from the walls or carpet. *Br. of Resp't (Burns)* at 24. Burns, however, has misconstrued and twisted this fact to fit her narrative.

Here, there was an apparent surface problem in the crawl space where cats used the dirt floor as a litter box. There were no apparent surface problems with the carpet or walls.

The comment from the inspector clearly refers to a common situation where a homeowner's pets had "accidents" (urinated on the carpet) and the smell could not be thoroughly cleaned from the carpet. But this simply could not be the case here. The carpeting in the home was ***brand new*** and the walls ***freshly painted***, neither of which were stained or soiled. It is illogical to suggest that Hauck should have seen through Respondents' deceptive ingenuity and cunning and took measures to invasively rip up brand new carpet, especially in light of the apparent and more likely source of the smell – the crawl space.

Throughout Burns' Response, she conveniently leaves out evidence of the defect in the crawl space. The crawl space had *actual* pet urine and feces on the dirt floor. The inspector concluded:

“There are large openings into the crawl space under the home. These openings can allow animals and other vermin to have access. It appears that cats have accessed the crawl space and used the dirt floor as a litter box. Recommend properly sealing off the crawl space from animals, but maintain air flow to prevent moisture built-up and rot or mold conditions.” CP at 405.

Appellants had experienced a similar prior-to-purchase problem of a urine and feces smell in a different home that they purchased in Montana. CP at 425. They simply cleaned the crawl space out and the smell dissipated. *Id.*

Though Hauck and Moon did their diligence and asked questions about the sources of the smell, no amount of questioning would have led to the discovery of the urine and feces beneath the new carpeting. In fact, the Douglas Court accounted for this likelihood: “the [sellers'] overt attempts to cover up the defects prior to listing the property and their preinspection evasiveness may support an inference, *if not a conclusion*, that such inquiry would have been fruitless.” 173 Wn.App. at 833 (emphasis added).

Respondent Burns' claim that Hauck never attempted to request information from the sellers is flawed. Rather, Burns asserted herself in

between the parties and told Hauck and Moon that she was the lone source of communication to the sellers. CP at 427. Hauck and Moon asked Burns to find out from the Barrs what type of wood was under the carpet. CP at 426. They also asked Burns about the smell noted in the inspection report. Id.

Burns directed Hauck and Moon to place their inquiries with her, as the representative of her sellers/parents. She should not now benefit from this by saying that Hauck's claim fails because he never spoke directly with the Barrs. Adopting this logic would allow an avenue for sophisticated real estate agents to continually dupe the unsuspecting consumer in fraudulent concealment circumstances.

Respondent Burns essentially asserts that buyers must do everything under the sun to discover the deceitful doings of a seller or agent. It does not matter that Hauck did not partake in every conceivable method to discover the source of a smell. In Washington, buyers "[do] not have a duty to perform exhaustive invasive inspection, or endlessly assail the [sellers] with further questions. Douglas, 173 Wn.App. at 834.

Hauck had no absolute duty to rip up the carpets, especially where they were brand new and not stained or soiled. He had no absolute duty to be relentless in his questioning of the Barrs, especially where Burns asserted herself as the only party to be involved in any communications.

Hauck “merely had to make further inquiries after discovering [the defect] or at trial show that further inquiry would have been fruitless. Id.

For purposes of summary judgment, reasonable minds could conclude that Hauck’s actions were reasonable. He has clearly presented evidence of further inquiry that was reasonable and diligent. He should have the opportunity to present this to a jury for their determination of its reasonableness and whether inquiry was or would have been fruitless. This Court should view the evidence in the light most favorable to Hauck and reverse the Trial Court’s summary judgment dismissal.

3. The Trial Court Erred in Dismissing Hauck’s Negligent Misrepresentation Claim Against Burns/Soleil.

i. Negligent Misrepresentation Claim Against Barr.

The Trial Court dismissed Appellant Hauck’s negligent misrepresentation claim against Respondent Barr. Hauck has not challenged this on appeal.

ii. Burns/Soleil Failed to Disclose Their Knowledge of the Defect in Violation of Their Statutory Duties.

Appellant’s Opening Brief cites Bloor v. Fritz as a similar example to the present case. 143 Wn.App. 718, 180 P.3d 805 (2008). In Bloor, a real estate agent was found liable for negligent misrepresentation after violating RCW 18.86.030 by failing to disclose his knowledge of the history of illegal drug manufacturing in a home. 143 Wn.App. at 734

(2008). Hauck also argued that despite Burns' duty under RCW 18.86.030(1)(d), she failed to disclose that she knew where the pet urine smell emanated from. These issues are based on the tort of negligent misrepresentation that exists where a defendant has a statutory duty but fails to disclose material information. See Van Dinter v. Orr, 157 Wn.2d 329, 333, 138 P.3d 608 (2006).

a. Burns/Soleil Violated Their RCW 18.86 Duties.

Respondent Burns is correct that Hauck's claim is that Burns was silent about material facts and material defects despite her duty to speak. *Br. of Resp't (Burns)* at 36. Hauck asserted that Burns knew of a material fact (the urine-and-feces defect beneath the new carpeting) that was not readily ascertainable to him and failed to disclose it despite a duty under RCW 18.86.030(1)(d) requiring disclosure.

As discussed in Appellant's Opening Brief and *supra*, there is clear circumstantial evidence of Burns' actual knowledge of the defect hidden beneath the new carpeting. In sum – a home where tenants constantly allowed animals to urinate and defecate on the floors; a home that had filthy, stained carpets; a home which Barr and Burns saw before it was cleaned, respectively describing it as a “mess” and “trashed.” CP at 416, 420; 375-76, 426. Adding to this, Burns had other sophisticated parties like herself (a broker and lender) mention to her that they noticed the

smell. CP at 397, 401. She was also seen spraying air freshener throughout the home when Hauck and Moon picked up the keys (evidence that she knew all along and was continuing to cover it up). CP at 428, 430.

Burns is incorrect that Douglas and Alejandro preclude Hauck's claim in this case because he was on notice of a defect. Those two cases involve buyers that failed to do *any* further inquiry or obtain a finding that inquiry would have been fruitless. The buyers in those cases could make no argument of reliance on the duty of a seller/agent to speak because they failed to conduct further inquiry and thus could not show that the defect was not readily ascertainable to them.

Hauck has presented evidence that he did perform further inquiry and that inquiry was or would have been fruitless. This separates him from the buyers in Douglas and Alejandro. There is a genuine issue of material fact as to whether the defect was readily ascertainable because he never discovered the hidden urine and feces under the new carpet after reasonable further inquiry and a jury could determine that it was or would have been fruitless. Since Hauck has presented a genuine issue of material fact as to this issue, Burns can face potential liability under RCW 18.86.030(1)(d).

Burns' contention that an omission alone cannot constitute negligent misrepresentation is incorrect. *Br. of Resp't (Burns)* at 36-37. A

claim of negligent misrepresentation may rest on an omission by one party when that party has a duty to disclose information. Alexander v. Sanford, 181 Wn.App. 135, 177, 325 P.3d 341 (2014), review granted, 181 Wn.2d 1022, 339 P.3d 634 (2014), dismissed, No. 90642-4 (Wash. May 8, 2015).

Burns attempts to hide behind various contractual provisions and statements to escape liability. These provisions do not allow her to usurp her statutory duties to disclose a material defect when she has actual knowledge of the defect and it is not readily ascertainable to the buyer. She should not be shielded from liability.

Burns failed to disclose existing material facts, thereby not dealing honestly and in good faith or exercising reasonable skill and care. When the evidence is viewed in the light most favorable to Hauck, a jury could conclude by clear, cogent, and convincing evidence that Burns had relevant knowledge sufficient to hold Burns and Soleil liable for failure to disclose material information.

b. Burns/Soleil Violated Their RCW 64.06 Duties.

An appellate court “*may* refuse to review any claim of error which was not raised in the trial court.” RAP 2.5(a); Roberson v. Perez, 156 Wn.2d 33, 39, 123 P.3d 844 (2005)(emphasis added). The use of the word “*may*” indicates that RAP 2.5(a) is written in discretionary, rather than mandatory terms. Roberson, 156 Wn.2d at 39.

Hauck's negligent representation claim in the complaint alleges that Burns had knowledge of the concealed urine and feces and failed to disclose this to Hauck despite her duty. CP at 445-46. RCW 64.06.050(2) focuses on a real estate agent's actual knowledge just as RCW 18.86.030(1)(d) does. Burns has defended her actual knowledge throughout the litigation. Because RCW 64.06.050(2) is based upon actual knowledge, there is nothing novel to the defense or potential injury that would prejudice her to a topic that has been subject to much debate and alleged in the Complaint.

Respondent Burns is incorrect that the record is devoid of any evidence of an error in the Seller Disclosure Statement or her knowledge of its errors. Burns was at the signing with the Barrs where they all signed the necessary documents for the transaction to be complete. CP at 400. On November 10, 2012, the Barrs and Burns filled out and signed their respective signature lines on the Purchase and Sale Agreement and Seller Disclosure Statement documents. CP at 51-81.

Burns was present while the Barrs filled out and signed the Seller Disclosure Statement. Her presence at this signing and her knowledge of the defect, as discussed in Appellant's Opening Brief and *supra*, together form clear evidence that she knew the errors, inaccuracies, or omissions

committed by the Barrs. Viewing the evidence in the light most favorable to Hauck, it is clear that summary judgment was inappropriate.

4. Hauck Presented Sufficient Evidence that Respondents' Acts Constitute a CPA Violation.

i. There Can Be an Unfair or Deceptive Act Because Respondents Had Knowledge of the Urine and Feces Under the New Carpet.

As discussed in Appellant's Opening Brief and *supra*, it is clear that there is sufficient circumstantial evidence to create a genuine issue of material fact as to the Barrs and Burns' actual knowledge of the defect. It is also clear that Hauck did reasonable further inquiry or that it was or would have been fruitless.

ii. There is a Public Interest Impact Arising from This Dispute.

Respondent Burns is correct that disputes between real estate professionals and property buyers can be private rather than public. *Br. of Resp't (Burns)* at 45. But a dispute between a real estate agent and a property purchaser may have a public impact. See Bloor, 143 Wn.App. at 736.

Respondent Burns is incorrect that this claim does not relate to general advertisement that misrepresented the condition of the property. This conduct occurred in the course of the Barrs and Burns offering residential property for sale to the public. They advertised the property to

the public for sale in the multiple listing service directory. CP at 396, 411. There were also numerous showings of the home, at least twenty (20). CP at 397. Listing the property without disclosing the urine and feces hidden beneath the new carpet had the capacity to deceive any member of the public who used the directory or expressed interest in the property.

The goal of the CPA is that it “shall be liberally construed that its beneficial purposes may be served.” RCW 19.86.920. This Court should view the evidence in the light most favorable to Hauck and interpret in his favor in accord with the goal of the CPA.

5. Hauck’s Breach of Contract Claim Should Survive and He Should Have the Opportunity to Rescind the Contract.

Because there are material facts in dispute with respect to Appellant Hauck’s other claims against the Barrs, his breach of contract claim should survive, as should the opportunity to rescind the deal.

6. Burns/Soleil are Not Entitled to Attorney’s Fees or Costs.

Burns is correct that there is no contractual basis between her and Hauck for fees from each other. Burns’ offers no citations to any authority to support her request for attorney’s fees. RAP 18.1 requires more than a bald request for attorney fees on appeal. Thweatt v. Hommel, 67 Wn.App. 135, 148, 834 P.2d 1058, review denied, 120 Wash.2d 1016, 844 P.2d 436 (1992). Argument and citation to authority are required under the rule to

advise the court of the appropriate grounds for an award of attorney fees as costs. Austin v. U.S. Bank of Wash., 73 Wn.App. 293, 313, 869 P.2d 404, review denied, 124 Wash.2d 1015, 880 P.2d 1005(1994). Her request for attorney's fees should be denied. Further, Hauck's appeal is not frivolous, as reasonable minds could differ on the issues.

B. CONCLUSION

Hauck presented sufficient circumstantial evidence of Respondents' actual knowledge of the hidden urine and feces beneath the new carpet and that Burns clearly violated her statutory duties. He has also presented sufficient evidence that all Respondents violated the CPA. The Trial Court and Respondents have ignored both Hauck's evidence of further inquiry and the fact that reasonable minds could find that further inquiry would have been fruitless.

In Douglas, the Court thought the sellers' actions were "egregious" and "reprehensible," but could do nothing about it because a trial revealed that the buyers made no inquiries and obtained no finding from the court that further inquiry would have been fruitless. 173 Wn.App. at 833-35. Unlike the Douglas Court, this Court does not have to ratify the egregious and reprehensible conduct that has been alleged. When the

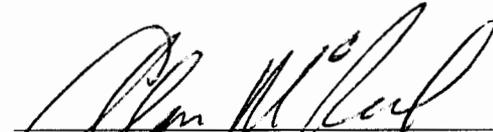
issues are viewed in the light most favorable to Hauck, it is clear that Respondents' alleged deception should be put before a jury.

DATED this 20th day of May, 2016.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Washington that on the **23rd day of May, 2016**, at Spokane, Washington, I caused to be served the foregoing *Reply Brief of Appellants* on the following in the manner indicated:

Robert R. Rowley Attorney at Law 7 S. Howard St., Suite 218 Spokane, WA 99201 rob@rowleylegal.com	<input checked="" type="checkbox"/> HAND DELIVERY <input type="checkbox"/> U.S. MAIL <input type="checkbox"/> OVERNIGHT MAIL <input type="checkbox"/> VIA FACSIMILE (509)928-3084 <input type="checkbox"/> VIA EMAIL
Erin Varriano Wood, Smith, Henning & Berman, LLP 520 Pike Street, Suite 1525 Seattle, WA 98101 evarriano@wshblaw.com	<input type="checkbox"/> HAND DELIVERY <input checked="" type="checkbox"/> U.S. MAIL <input type="checkbox"/> OVERNIGHT MAIL <input type="checkbox"/> VIA FACSIMILE (206) 299-0400 <input type="checkbox"/> VIA EMAIL



JANA DUBES