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COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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SAS OREGON, LLC,

Respondent,

v.

QUANAHA M. SPENCER and GWEN N. SPENCER,

Appellants.

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**BRIEF OF RESPONDENT SAS OREGON, LLC**

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## I. INTRODUCTION

Appellants Quannah and Gwen Spencer (the “Spencers”) brought two causes of action against Respondent SAS Oregon, LLC (“SAS Oregon”): (1) fraud, and (2) violation of the Consumer Protection Act (“CPA”). Both claims arose out of a Real Estate Purchase and Sale Agreement (“REPSA”) entered into by SAS Oregon and the Spencers for the sale of a home in Spokane County. The trial court granted summary judgment, dismissing both claims against SAS Oregon, with prejudice.

It is not clear whether the Spencers are appealing the dismissal of both of their claims against SAS Oregon, or only the CPA claim. The Spencers also ask the Court to address the legality of the REPSA entered into by the parties. The legality of the REPSA is a new issue that was not raised by the Spencers before the trial court, and is being raised for the first time on appeal.

SAS Oregon purchased property located at 4311 S. Hogan Street, Spokane, Washington (the “Property”). SAS Oregon hired a licensed, registered Washington contractor to make improvements to the Property, then entered into the REPSA with the Spencers. At all times material hereto, both parties were represented by licensed real estate agents.

Before the Spencers took ownership of the Property, SAS Oregon signed a Form 17 Seller Disclosure Statement (“Disclosure Statement”), putting the Spencers on notice that conversions, additions and remodeling had been performed on the house. The Spencers’ offer was contingent on their subjective satisfaction with the Property. The Spencers commissioned a home inspector and subsequently provided SAS Oregon with a 13-point check-list of repairs and modifications that needed to be completed before they would purchase the Property. SAS Oregon complied, and hired a licensed, registered contractor to perform the requested work. The Spencers commissioned a second home inspection after the repairs were completed. After the Spencers, their agent, their inspector, and their mortgage lender were satisfied with the condition of the home, the Spencers gave their subjective satisfaction and moved forward to purchase the Property.

The material facts are undisputed. Those facts show that SAS Oregon never performed contractor duties on the Property. SAS Oregon hired a licensed, registered contractor to perform improvements on the Property. There is no evidence in the record suggesting that SAS Oregon ever made false representations to the Spencers prior to buying the Property. And, the Spencers were

advised by licensed agents, inspectors, and lenders before purchasing the Property.

The trial court was correct in summarily dismissing the Spencers' claims. SAS Oregon, therefore, respectfully asks the Court to affirm the trial court's decision in every respect.

## **II. RESTATEMENT OF THE ASSIGNMENTS OF ERROR**

A. Is the Real Estate Purchase and Sale Agreement, voluntarily and knowingly executed by the Spencers and SAS Oregon, a valid, enforceable contract?

B. Whether the trial court properly dismissed the Spencers' CPA claim against SAS Oregon when the Spencers cannot establish that SAS Oregon's per se violation of the Contractor Registration Act caused the Spencers any damage as SAS Oregon did not work on the Property or ever visit it?

C. Whether the trial court properly dismissed the Spencers' fraud claim against SAS Oregon when the Spencers cannot establish that any representation made in the Disclosure Statement, filled out by SAS Oregon's real estate agent, was fraudulent?

## **III. STATEMENT OF THE CASE**

### **A. Factual Background.**

SAS Oregon is an Oregon limited liability company with its

principal place of business in California. (CP 60). In 2013, SAS Oregon purchased the Property without ever visiting Spokane. Id. Thereafter, SAS Oregon hired Pence Properties, Inc. (“Pence Properties”), a registered Washington contractor to improve the Property. Id. Pence Properties was a licensed, bonded, and registered contractor at all times relevant hereto. Id. SAS Oregon did not superintend the work Pence Properties performed on the Property. Id.

Once the improvements were complete, SAS Oregon listed the Property for sale. Id. SAS Oregon’s real estate broker, Marie Pence, accurately and truthfully completed a Form 17 Disclosure Statement. Id. SAS Oregon’s real estate agent, Marie Pence, filled out and sent the Disclosure Statement to SAS Oregon, and SAS Oregon initialed it. Id.

The REPSA included an Inspection Addendum that explicitly conditioned the sale of the Property on the Spencers’ subjective satisfaction with the Property and its improvements. (CP 31-32; 60-61). Pursuant to that Addendum, and after an initial property inspection, the Spencers proposed repairs that would need to be remedied prior to closing. (CP 61; 134-140). SAS Oregon utilized Pence Properties to complete the requested work, but at no point

did SAS Oregon superintend the repair work or visit the property in any capacity. (CP 60-61).

The Spencers commissioned the assistance of a home inspector for a second time after the repairs listed in the Addendum were complete. (CP 134-140). At her deposition, Ms. Spencer testified that all parties involved, including the Spencers and their real estate agent, were “*subjectively satisfied*” with all of the improvements performed on the Property. *Id.* Upon subjective satisfaction, the Spencers took ownership of the Property. (CP 140-141).

The Spencers were fully apprised of the condition of the Property when they purchased it. (CP 134-141). SAS Oregon disclosed that not all permits were obtained in the Disclosure Statement. (CP 26-30). Furthermore, SAS Oregon does not dispute that at the time it purchased the Property, the law required it to register as a contractor. However, the law has since changed. A property owner is no longer required to register as a contractor when it purchases residential real property, hires, licensed registered contractors to perform work on that property, and sells it within less than one year after purchase. (CP 65-66; 119-120). Furthermore, SAS Oregon does not dispute that due to this failure

to register, that it committed a per se violation of the Contractor's Registration Act. *Id.* At no point did SAS Oregon attempt to mislead the Spencers, as to the condition of the house (it would not have been possible for SAS Oregon to mislead the Spencers as they were never aware of the condition of the house beyond their agent's representations). (CP 60-61). In fact, both of the Spencers testified that they have no evidence and cannot point to any person that would support their assertion that SAS Oregon's representations in the Disclosure Statement were not based upon SAS Oregon's actual knowledge. (CP 116-119; 140-144; 152-157).

**B. Procedural Posture.**

The Spencers filed their First Amended Complaint on September 9, 2016 ("Amended Complaint"). (CP 1-40). In that Amended Complaint, the Spencers asserted two causes of action against SAS Oregon: (1) fraud, and (2) violation of the CPA. *Id.* The parties engaged in discovery and the Spencers were deposed. (CP 122-158). SAS Oregon moved for summary judgment asking the trial court to dismiss the Spencers' claims against it on January 6, 2017. (CP 56-66). The Spencers responded on January 23, 2017. (CP 95-113). Like the Spencers' current briefing, there are numerous unsupported factual allegations. *Id.* SAS Oregon filed its

reply brief in support of its motion for summary judgment on January 30, 2017. (CP 114-157). The trial court heard SAS Oregon's motion for summary judgment on February 3, 2017. (CP 158). On March 16, 2017, the trial court issued its letter ruling. (CP 159-163). And, the order dismissing the Spencers' claims against SAS Oregon was entered on April 7, 2017. (CP 166-168). The Spencers filed a Notice of Appeal on May 8, 2017. (CP 164-165).

#### IV. ARGUMENT

**A. Reviewing this Matter De Novo, this Court Should Affirm the Trial Court's Summary Dismissal of all Claims Against SAS Oregon.**

Summary judgment rulings are reviewed *de novo*. See Tanner Elect. Coop. v. Puget Sound Power & Light Co., 128 Wn.2d 656, 668 (1996). The appellate court must engage in the same inquiry as the trial court. Highline Sch. Dist. No. 401 v. Port of Seattle, 87 Wn.2d 6, 15, 548 P.2d 1085 (1976).

In order to survive summary judgment, "*the nonmoving party must set forth specific facts which sufficiently rebut the moving party's contentions and disclose the existence of a genuine issue as to a material fact.*" Michael v. Mosquera-Lacy, 165 Wn.2d 595, 601-02, (2009) (emphasis added) (quoting Meyer v. Univ. of Wash., 105 Wn.2d 847, 852 (1986)). The party opposing summary

judgment “*may not rely on speculation or argumentative assertions*” to overcome summary judgment. Sourakli v. Kyriakos, Inc., 144 Wn. App. 501, 507 (2008), rev. denied 165 Wn.2d 1017 (2009) (quoting Craig v. Washington Trust Bank, 94 Wn. App. 820 (1999)).

Likewise, pursuant to CR 56(e), the party opposing summary judgment may “*not rest upon the mere allegations or denials in his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.*” The Spencers have offered only speculation, unsupported factual allegations, and argumentative assertions. (CP 41-55). Thus, the Spencers failed to meet their burden for surviving summary judgment.

The material facts are undisputed: (i) SAS Oregon purchased and sold the Property without ever inspecting, viewing or even visiting it, (ii) the Spencers entered into a legally binding Real Estate Purchase and Sale Agreement, purchasing the Property after two separate home inspections, and after expressly and voluntarily acknowledging that the Property met their subjective satisfaction, (iii) SAS Oregon did not perform any work on the Property and hired Pence Properties, Inc., a licensed and bonded contractor to

facilitate the remodel of the Property, (iv) SAS Oregon was not a licensed and registered contractor when it bought and sold the Property to the Spencers, and (v) the Spencers' current claims that the Property is somehow defective are unsupported by any facts or evidence in the record beyond their own self-serving testimony. (CP 1-168).

In this case, both the fraud claim and the CPA claim against SAS Oregon fails as a matter of law because SAS Oregon made true representations in the Disclosure Statement, and its failure to register as a contractor did not cause the Spencers any damage. (CP 60-61). SAS Oregon had no actual knowledge of any of the alleged defects that Plaintiffs now allege exist within the Property. Id. Furthermore, the sale of the Property was subject to an Inspection Addendum that allowed Plaintiffs to have any and all requested repairs performed on the Property to their subjective satisfaction. Id. Therefore, the fraud claim and the CPA claim against SAS Oregon should be dismissed as a matter of law because Plaintiffs cannot make a showing sufficient to establish that SAS Oregon had knowledge that any representations it made to Plaintiffs were allegedly false at the time those representations were made. Id. SAS Oregon is entitled to summary judgment on all claims as a matter of

law and the trial court should be affirmed.

**B. The Real Estate Purchase and Sale Agreement is a Valid, Binding Contract.**

For the first time on appeal, the Spencers allege that the Purchase and Sale agreement is an illegal, unenforceable contract. As set forth in the Amended Complaint, the Spencers' fraud claim was based upon alleged misrepresentations made in the Disclosure Statement. (CP 18-19). The Spencers did not assert a claim for fraudulent inducement, nor did the Spencers plead that the REPSA was illegal. (CP 1-40). *"The appellate court may refuse to review any claim of error which was not raised in the trial court."* RAP 2.5(a). RAP 2.5(a) provides three claimed errors may be raised for the first time on appeal:

- (1) lack of trial court jurisdiction,*
- (2) failure to establish facts upon which relief can be granted, and*
- (3) manifest error affecting a constitutional right. A party or the court may raise at any time the question of appellate court jurisdiction.*

*"To meet RAP 2.5(a) and raise an error for the first time on appeal, an appellant must demonstrate (1) the error is manifest, and (2) the error is truly of constitutional dimension."* State v. O'Hara, 167 Wn.2d 91, 98 (2009). Thus, the appellant must *"identify a constitutional error and show how the alleged error*

*actually affected the appellant's trial rights.*" Id. (quoting State v. Kirkman, 159 Wn.2d 918, 926-27 (2007)). The Spencers have not even attempted to demonstrate that the trial court committed manifest error by not considering the enforceability and legality of the REPSA, an issue not raised before the trial court. (Appellants' Brief, pp. 29-30). This issue should not be considered.

The Spencers contend that "*without obtaining the legally required building permits and inspection for the renovation completed on the property, the Defendants SAS Oregon . . . did not have legal authorization to undertake the renovations on the property.*" (Brief of Appellants, pp. 29-30). However, as defined by Blacks' Dictionary, an illegal contract is one based on a "*promise that is prohibited because the performance, formation, or object of the agreement is against the law.*" (Black's Law Dictionary, contract (10<sup>th</sup> ed. 2014)). Selling a home is not against the law. SAS Oregon, through the REPSA, sold the Property to the Spencers. (CP 60-61). The Spencers claim that because SAS Oregon knew that not all permits were obtained by the licensed, registered contractor it hired to perform work on the Property that the contract for the sale of the Property is illegal. (Brief of Appellants, pp. 29-30). Assuming, *arguendo*, that this contention has any merit, the Spencers

knowingly and voluntarily entered into the REPSA, knowing that not all work performed was permitted as evidenced by the Disclosure Statement. (CP 26-30). Selling a home is not illegal, and the Spencers knew that not all permits were obtained for the work performed on the Property prior to purchasing it. *Id.* Thus, the issue of illegality, raised for the first time on appeal, is meritless and should not be considered.

**C. The Trial Court Properly Dismissed Appellants' Fraud and Consumer Protection Act Claims Against Respondent.**

Appellants attempt to argue their CPA claim anew, asserting that it was error for the Court to find that SAS Oregon did not cause injury to them for failing to disclose that repairs were completed in violation of state law. (Brief of Appellant, pp. 36-40). It is unclear whether this is an attempt to argue a different form of the fraud claim or the CPA claim. As set forth herein, the Spencers' fraud claim is based upon SAS Oregon's alleged misrepresentations in the Disclosure Statement, not on its alleged omission that work was performed without permits. (CP 1-40). Likewise, the Spencers' CPA claim is based upon SAS Oregon's failure to register as a contractor, not on an alleged omission that work was performed without permits. *Id.* As set forth above, SAS Oregon disclosed to the

Spencers in the Disclosure Statement that not all work performed was permitted. (CP 26-30). And, SAS Oregon did not perform any work on the Property. (CP 60-61).

To the extent this Court considers this assertion, (not raised before the trial court), claims against the seller of a residential property arising from the Seller's Disclosure are not actionable under the CPA. RCW 64.06.060. The Spencers claims that SAS Oregon, as seller of the Property, violated the CPA by allegedly not complying with RCW 64.06.015 ("Sellers Duty to Disclose"). However, the Washington State legislature has dealt with this exact issue and made it clear that "***the practices covered by [RCW 64.06] are not matters vitally affecting the public interest for the purpose of applying the consumer protection act.***" RCW 64.06.060 (emphasis added); see also Svendsen v. Stock, 143 Wn.2d 546 (2001). In short, the Spencers' assertion that they can recover under the CPA for alleged misrepresentations made in the Disclosure Statement is in direct contradiction to express Washington law. Id. CPA claims arising out of representations made in a Seller Disclosure are not applicable to the seller of the home, but may be held against the seller's agent. Id. at 558.

In Svendsen, the Sellers of a home began filling out a seller disclosure statement and attempted to answer “yes” with respect to “*standing water or drainage problems.*” 143 Wn.2d at 550. The Sellers’ real estate agent instructed them to answer “no,” misleading the buyers of the potential water issue. Id. at 550-51. When the misrepresentation was discovered and the plaintiffs demonstrated that both the seller and the real estate agent had knowledge of the drainage problems, the court found that CPA violations do not apply to claims arising from a seller disclosure statement. Id. at 553-559. The statutory language of RCW 64.06.060 specifically prevented the sellers from being liable under the CPA. Id. Any alleged “*misrepresentations*” in the Disclosure Statement do not give rise to a CPA claim against SAS Oregon. Such a claim is statutorily barred by RCW 64.06.060.

Furthermore, if this is an effort to reassert the Spencers’ fraud claim, that claim fails as well. In order to prevail on a fraud claim, the Spencers must prove all of the following elements:

*(1) representation of an existing fact; (2) materiality; (3) falsity; (4) the speaker's knowledge of its falsity; (5) intent of the speaker that it should be acted upon by the plaintiff; (6) plaintiff's ignorance of its falsity; (7) plaintiff's reliance on the truth of the representation; (8) plaintiff's right to rely upon it; and (9) damages suffered by the plaintiff.*

Stiley v. Block, 130 Wn.2d 486, 505 (1996). And, the Real Property Transfers – Sellers’ Disclosure chapter explicitly provides: “***The seller shall not be liable for any error, inaccuracy, or omission in the real property transfer disclosure statement if the seller had no actual knowledge of the error, inaccuracy, or omission.***” RCW 64.06.050(1)(emphasis added). As the Spencers testified, they cannot support their fraud claim. (CP 122-157). They have no knowledge of any person or document that would support their claim that the representations made in the Disclosure Statement were not based upon SAS Oregon’s actual knowledge. (CP 122-157). SAS Oregon declared that its actual knowledge of the Property was accurately set forth in the Disclosure Statement. (CP 60-61). Consequently, this new version of the Spencers’ CPA, or fraud, claim, raised for the first time on appeal, should not be considered.

**D. The Trial Court Properly Dismissed the Spencers’ CPA Claim Against SAS Oregon Because There is No Causal Link Between SAS Oregon’s Failure to Register as a Contractor and the Spencers’ Unsubstantiated Damages.**

Contrary to the Spencers’ assertion, the trial court did find that failure to register as a contractor was a per se violation of the CPA at the time SAS Oregon sold the Property to the Spencers.

RCW 18.27.350. However, a per se CPA violation does not eliminate the Plaintiff's burden to establish causation and damages. In order to prevail on a CPA claim, the plaintiff has the burden to prove that (1) the defendant engaged in an unfair or deceptive act or practice (2) occurring in trade or commerce (3) with a public interest impact (4) **that proximately causes** (5) **injury** to a plaintiff in his or her business or property. Douglas v. Visser, 173 Wn. App. 823, 834 (2013)(emphasis added); Panag v. Farmer's Ins. Co. of Washington, 166 Wn. 2d 27, 37 (2009); WPI 310.01. Failure to establish any of aforementioned elements is detrimental to a CPA claim. Michael v. Mosquera-Lacy, 165 Wn.2d 595, 602 (2009); see also Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wn.2d 778, 793 (1986). To establish causation in a CPA claim, "*a plaintiff must establish that but for the defendant's unfair or deceptive act or practice the plaintiff's injury would not have occurred.*" Indoor Billboard/Washington, Inc. v. Integra Telecom of Washington, Inc., 162 Wn. 2d 59, 82 (2007).

SAS Oregon admits that it was not a contractor, as defined by the 2014 version of Contractor Registration Act.<sup>1</sup> However, as the

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<sup>1</sup> In 2007, the Washington State Legislature significantly broadened the definition of "contract" and amended RCW 18.27.010 and categorized a "contractor" as

trial court aptly pointed out in its ruling, there is nothing in the record to link SAS Oregon’s licensing issue with any of the Spencers’ alleged injuries or damages. (CP 156-163). As the trial court explained:

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any person, firm, corporation, or other entity covered by this subsection (1), whether or not registered as required under this chapter or who are otherwise required to be registered or licensed by law, who offer to sell their property without occupying or using the structures, projects, developments, or improvements for more than one year from the date the structure, project, development, or improvement was substantially completed or abandoned.

HB 1749, 64<sup>th</sup> Leg., Sess., (Wn. 2015). On July 24, 2015, the Washington State Legislature specifically amended the definition of “contractor” to cure the overbroad definition. The legislature added the following sentence to RCW 18.27.010(1)(c), clearly exempting owners such as SAS Oregon from the definition of “contractor” and fixing the statute:

A person, firm, corporation, or other entity is not a contractor under this subsection (1)(c) if the person, firm, corporation, or other entity contracts with a registered general contractor and does not superintend the work.

As a result, owners, such as SAS Oregon, are not required to register as a contractor if they hire licensed and registered contractors to perform the work and they do not superintend the work.

*[T]he Spencers are not relieved of the requirement that they produce competent and admissible evidence supporting their claim. Nothing they have produced links the licensing issue to any alleged injuries or damages. SAS did not work on the property, and according to them, didn't even view the property.*

Id.

In fact, the record is void of any evidence, whatsoever, to establish that any damages exist. (CP 60-61; 122-157). To wit, the Spencers contend that SAS Oregon “*operated in bad faith that prevented the Spencers from obtaining the full benefit of performance, namely, purchasing a home free of renovations or repairs that were violations of the building code due to SAS Oregon, LLC’s failure to obtain building permits and inspections.*” (Brief of Appellants). What the Spencers fail to acknowledge is that the contractor hired by SAS Oregon was registered and licensed in Washington. (CP 60-61). And, perhaps more importantly, the Spencers knew that not all permits had been obtained for the work performed, as SAS Oregon explicitly disclosed that in the Disclosure Statement. (CP 26-30). The Spencers cannot support allegations to the contrary. The fact that SAS Oregon was not a registered contractor has no bearing on the work performed by the contractors hired to remodel the Property.

SAS Oregon did not perform any work on the Property, did

not supervise any work on the Property and, never visited the Property throughout the course of the improvements or the closing. (CP 60-61). There is no evidence that SAS Oregon ever “*induced*” the Spencers to purchase or misrepresented that they were registered contractors in Washington. (CP 1-168). There is nothing in the record demonstrating that SAS Oregon conversed with the Spencers in any manner. *Id.* Whether SAS Oregon was registered as a contractor has no bearing on this matter as its failure to register did not proximately cause the Spencers any of their alleged damages.

Due to the Spencers lack of evidence to establish the causal connection necessary to establish a CPA claim, the trial court properly dismissed the Spencers’ CPA claim against SAS Oregon. For this reason, the Court should affirm the trial court’s dismissal of the CPA claim.

If this Court believes a causal link exists, then the CPA claim should be dismissed due to the Spencers’ failure to establish damages. The fifth element of a CPA claim requires an injury to business or property. *Hangman Ridge*, 105 Wn. 2d at 792. The injury itself “*need not be great, but it must be established.*” *Id.* The injury must be an injury to “*business or property,*” which excludes

personal injury damages such as emotional distress damages. See Stevens v. Hyde Athletic Industries, Inc., 54 Wn. App. 366, 370 (1989) (injury arising from broken ankle is not recoverable under the CPA); Ambach v. French, 167 Wn.2d 167, 172-73 (2009) (personal injury damages are not recoverable under the CPA); Panag, 166 Wn.2d at 57 (injury due to mental distress, embarrassment, and inconvenience are not recoverable under the CPA).

**i. Personal Injury and Emotional Distress are not Compensable under The Consumer Protection Act.**

Plaintiffs claim they have suffered personal injury as a result of SAS Oregon's alleged CPA violation. The Spencers allege that personal injury in the form of "*mental distress, embarrassment and inconvenience' which entail pecuniary loss, is compensable under the Consumer Protection Act.*" (Brief of Appellant, p. 34). To support their claim, the Spencers cite to Keyes v. Bollinger, 31 Wash. App. 286, 296 (1982). Id. However, Keyes, along with the all Washington cases dealing with compensation for personal injury under the Consumer Protection Act, hold the exact opposite. See Panag, 166 Wn.2d at 57 (injury due to mental distress, embarrassment, and inconvenience are not recoverable under the

CPA); Washington State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn.2d 299, 317–18 (1993) (emotional distress damages not available under the CPA because the statute, by its terms, makes no mention of damages other than with respect to harm to “business or property”); Keyes v. Bollinger, 31 Wash. App. 286, 296 (1982) (same). Stevens v. Hyde Athletic Industries, Inc., 54 Wn. App. 366, 370 (1989) (injury arising from broken ankle is not recoverable under the CPA); Ambach v. French, 167 Wn.2d 167, 172-73 (2009) (personal injury damages are not recoverable under the CPA);

Any injuries alleged under a CPA claim must be limited to “*business or property*,” which excludes personal injury damages such as emotional distress damages. See supra. Any damages related to the Spencers’ personal injury are not recoverable. Thus, even if the Spencers were able to establish a causal link between SAS Oregon’s failure to register as a contractor and their alleged damages, which they cannot, they are unable to recover for their self-serving testimony alleging emotional distress. Consequently, the trial court’s dismissal of the Spencers’ CPA claim should be affirmed.

**ii. The Spencers Have Presented No Evidence to Support Injury or Damages to Their Property or Business.**

In addition to their inability to satisfy the other substantive elements of their CPA claim, the Spencers have a complete failure of proof on the damages element of their claim relating to their “*business or property.*” Damages are an essential element of a CPA claim. Hangman Ridge, 105 Wn.2d at 784-85. However, as noted by the trial court: “*The Spencers provide no evidence other than vague hearsay from an unnamed contractor that defects are even present on the property.*” (CP 159-163). SAS Oregon is cognizant of the fact that a CPA requires “*the injury involved need not be great, but it must be established.*” Hangman Ridge, 105 Wn. 2d at 792 (emphasis added). As such, failure to establish damages is detrimental to the Spencers’ CPA claim. Id.

In an effort to convince the Court of injury, the Spencers submitted a 41 page brief asking that this Court overturn the trial court’s summary judgment ruling dismissing both of their claims against SAS Oregon. Of the 41 pages, they attempt to quantify their damages in one sentence, without citing any evidence on the record to support their purported damages. The Spencers allege that they have “*lost approximately \$10,592.32 in repairs actually completed*

*and the property has declined in value directly due to the undisclosed defects in an amount of \$52,500.”* (Brief of Appellants, p. 40). Those figures appear to have been pulled out of thin air, as there is nothing on the record to support their claim. (CP 1-168). Unfounded evidence should not be considered by this Court and assuredly cannot meet the burden under a CPA claim.

Consequently, the Court should affirm the trial court’s decision and grant SAS Oregon’s motion for summary judgment, as the Spencers fail to meet the final element of damages with respect to their CPA claim.

**E. SAS Oregon is Entitled to Attorney’s Fees and Expenses Under RAP 18.1.**

SAS Oregon is entitled to fees and expenses for defending the current appeal under RCW 4.84.330 because the REPSA specifically provides for attorney fees to the prevailing party. RAP 18.1. SAS Oregon prevailed at the trial court and hereby moves for attorney fees and costs for having to file the present response.

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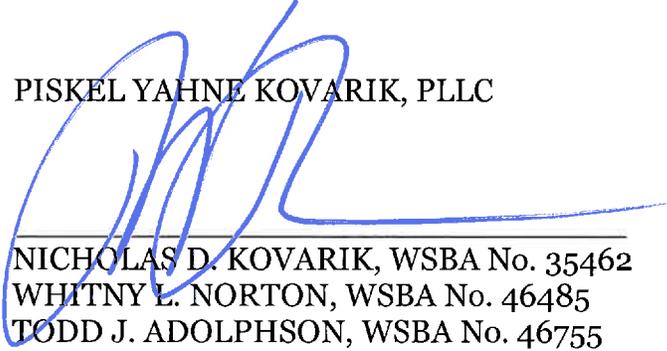
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**V. CONCLUSION**

Pursuant to the foregoing, SAS Oregon respectfully requests that this Court affirm the trial court's ruling, dismissing the Spencers' claims against SAS Oregon with prejudice.

DATED this 21<sup>st</sup> day of November 2017.

PISKEL YAHNE KOVARIK, PLLC



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