

67521-4

67521-4

No. 67521-4-I

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION I

---

KAM SITTHIDETH

V.

CEDAR RIVER WATER & SEWER

---

BRIEF OF APPELLANT

---

KHAMSING (KAM) SITTHIDETH  
Pro Se

KAM SITTHIDETH  
15405 141<sup>st</sup> PL SE,  
RENTON, WA 98058  
Tel. (425) 277 7628

FILED  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON  
2011 OCT 21 PM 3:19

OCT 21 2011

**TABLE OF CONTENTS**

I. ABBREVIATION ..... 1

II. ASSIGNMENT OF ERRORS.....3

    A. Assignment of Errors.....3

    B. Assignment of Issues pertaining to Errors.....4

III. STATEMENT OF THE CASE..... 5

IV. ARGUMENT ..... 3

V. CONCLUSION ..... 3

## TABLE OF AUTHORITIES

### Cases

Carlile v. Harbour Homes, Inc., 147 Wn.App. 193, 194 P.3d 280 (2008).....	9
Clark County public Utility District v. State of Washington Department of Revenue, 153 Win.App. 737, 746-47, 222 red 1232 (2009).....	6
Edmonds v. John L . Scott Real Estate, Inc., 87 Wn.App. 834, 847, 942 P.2d 1072 (1997).....	19
Grayson v. Nordic Construction, Inc., 92 Wn.2d 548, 599 P.2d 1271 (1979).....	10
Griffith v. Centex Real Estate Corp, 93 Wn.App. 202, 214-15, 969 P.2d 486 (1998).....	9
Haner v. Quincy Farm Chemicals, Inc., 97 word 753, 649 P.2d 828(1982).....	15
Hangman Ridge Training Stables, Inc., v. Safeco Title Insurance Company 105 Wn.2d 778, 780, 719 P.2d 531 (1986) .....	8, 9, 14, 15
Henery v. Robinson, 67 Wn.App. 277, 834 P.2d 1091 (1992)..	10
Holmes Harbor Sewer District v. Holmes harbor Home Building LLC Frontier Bank, No.76062-4, paragraph 12. ....	17
Impecoven v. Department of Revenue, 120 Wn.2d 357, 365, 841 P.2d 752 (1992).....	6
Indoor Billboard/Washington, Inc. v. Integer Telecom of Washington, 162 Wn.2d 59, 74-75, 170 P.3d 10 (2007).....	9
Lidstrand v. Silvercrest Industries, 28 Wn.App. 359, 623 P.2d 710 (1981) .....	15

Loeffelholz v. Citizens for Leaders with Ethics and Accountability Now (C.L.E.A.N.), 119 Wn.App. 665, 694, 82 P.3d 1199 (2004).....	20
Marassi v. Lau, 71 Wn.App. 912, 859 P.2d 605 (1993).....	21
Mason v. Mortgage America, Inc., 114 word 842, 854, 742 P.2d 142 (1990).....	18
Nordstrom, Inc. v. Tampourlos, 107 word 735,740, 733 P.2d 208 (1987)..	18
Otis Housing Association, Inc. v. Ha, 165 Wn.2d 582, 588, 201 P.3d 309 (2009)...	12
Overton v. Consolidated Insurance Company 145 Wn.2d 417, 429, 38 P.3d 322 (2002).....	6
Schnall v. AT&T Wireless Services, Inc., 139 Wn.App. 280, 29 1-92, 161 P.3d 280 (1997).....	19
Sign- O-Lite Signs, Inc. v. DeLaurenti Florists, Inc, 64 Wn.App. 553, 825 P.2d 714 (1992).....	14, 18
State v. Ralph Williams Northwest Chrysler Plymouth, Inc., 87 Wn.2d 298, 308 fn 6, 553 P.2d 423 (1976).....	9
Vallandigham v. Clover Park School District, 154 Wn.2d 16, 26, 109 P.3d 805 (2005).....	6

**Statutes**

RCW 19.86.....(CP-249 – CP-250) .....	6, 12
RCW 19.86.010(2) .....	6
RCW 19.86.020 ...(CP-249).....	6, 12
RCW 19.86.090 ...(CP-250) .....	12

RCW 19.86.920 .....  
 USC 1692a.....(CP 245-248).....2, 6 ,22  
 RCW 57.08.081....(CP-196).....6, 11, 16, 18, 21, 22, 23

**Other Authorities**

Restatement (Third) Law Governing Lawyers, section 13, comment b; *Koehler v. Wales*, 16 Wn.App. 304, 308, 556 P.2d 233 (1976)..... 12  
 T.C.A. 56-7-1206.....12  
 WAC 246-808-530 (CP-224) ..... 9,11,15,16,18,21,22

**I. ABBREVIATION**

CP Court Paper

RPT Ruling Paper's Transcript

CPA Consumer Protection Act

RCW Revised code of Washington

USC United State Code

## **II. ASSIGNMENT OF ERRORS**

### **A. Assignment of Errors:**

No. 1 The trial court erred by granting summary judgment for defendant dismissing without resolving Sitthideth's claim for financial damages caused by defendant, by allowing RCW 57.08.081 to supersede Federal and State Consumer Protection Acts: USC 1692a, RCW 19.86.020, RCW 19.86.030.

No. 2 The trial court erred assuming RCW 57.08.081 was available for public research when it was not. RCW 57.08.081 was modified in 1998, the same year Sitthidet purchased his property without warning for unusual charges for "Service availability".

No. 3 The trial court erred by not taking action against Cedar's deceptive acts for generating false charges on plaintiff's repeatedly (charges for warnings of disconnection when disconnection was already done several months ago), this deception violated CPA 19.86.020, 19.86.030, 1692a, and RCW 57.08.081 itself.

**B. Assignment of Issues pertaining to Errors:**

No. 1 Should the trial court have entered any judgment in favor of Cedar River Water & Sewer without resolving Mr. Sitthideth's claim for damages under Consumer Protection Act? And without finding out whether or not Cedar has contributed to Mr. Sitthideth's Rental income loss?

**B. Assignment of Issues pertaining to Errors(continued):**

No. 2 Should the trial court have entered any judgment in favor of Cedar without determining whether or not Cedar is entitled for charging Service Availability when Cedar was the party inducing it?

No. 3 Should the trial court have entered any judgment in favor of Cedar without determining whether or not Cedar violated RCW 57.08.081, RCW 19.86.020, RCW 19.86.030?

No. 4 Should the trial court have entered any judgment in favor of Cedar without determining whether or not Cedar violated Federal Consumer Protection act?

No. 5 Should the trial court have entered any judgment in favor of Cedar without determining the conflict of Laws and without determining corruption of Cedar in respect to RCW 57 ?

### III. STATEMENT OF THE CASE

#### I. Cedar River Water & Sewer and its Program.

The Cedar River Water & Sewer is a public utility company serving many cities including unincorporated area of Renton, Fairwood city, Covington, etc., with its office in Fairwood Renton, Washington. Cedar does business with SPU (Seattle Public Utility), reselling their product to general public for profits even it claims itself as non-profit. It files its business under a “Municipality Utility Company”, it exists by virtue of Washington State Business Licensing dept. Cedar income and expenditure show it makes progressively more each year. With a growing rate of 6% to 10% annually. With that factor, it should make about \$8.5 millions in 2011. It claims it spent 1/8 of its income to buy water for resell. Google Satellite photos show it might have pumped water out of *LakeYoung* for resale for additional profits. In 1997, the rosy economy of president Clinton, the legislative lawmakers signed into law RCW 57.08.081 to give a public utility companies controls over billings. Later in 1998, the RCW 57.08.081 was modified to boost the utility income as US economy growing explosively. 1998 is the same year Mr. Sitthidet purchased his home without any warning of unusual charge “The charges for Service Availability”.

The billing disputes arrived after Cedar River Water & Sewer (referred to herein as Cedar) used RCW 57 abusively, to take customers' money (as in Mr. Sitthidet case) without providing actual product or service, after it initiated the disconnection. Mr. Sitthidet was unable to pay Cedar's unfair rate hike. Cedar consistently made a single customer pay high rate equals to six person rate. It called its high rate as "Base fee"; it is ultimately like a flat rate. Other water company considers Cedar "Base fee" is too high(CP 238- 243).

Cedar does not participate in working with low income customers like other water districts because it claimed it is not big enough but it provided water for at least seven cities. Mr. Sitthidet was unemployed for five years, all his life savings were gone, mainly to Cedar bills and mortgage.

#### **IV. ARGUMENT**

**Assignment of Error No. 1** The trial court erred by granting summary judgment for defendant dismissing with resolving Mr. Sitthideth's claim for damages caused by defendant, by allowing RCW 57.08.081 to supersede Federal and State Consumer Protection Acts: USC 1692a, RCW 19.86.020, RCW 19.86.030.

I. Standard of Review.

The trial court decided the matter quickly on a summary judgment motion of defendant (Cedar, the moving-party) without taking Mr. Sitthidet sustained loss and damages in consideration while disregard the State Statutes for Consumer Protection 19.86 and USC 1692a.

Summary judgment is appropriate only when the moving party demonstrates that there is no genuine issues of material fact (CP 170-171). All factual questions and inference from the facts that are presented must be resolved against the moving party and in favor of the non-moving party. Summary judgment should be granted only when reasonable persons can reach only one conclusion on the facts that are presented. *Overton v. consolidated Insurance Company*, 145 Wn.2d 417, 429, 38 P.3d 322 (2002); *Vallandigham v. Clover Park School District*, 154 Wn2d 16, 26, 109 P.3d 805 (2005); *Clark County Public Utility District v. State of Washington Department of Revenue*, 153 Wn.App. 737, 746-47, 222 P.3d 1232 (2009).

A court's review of a motion for summary judgment is not limited to determining whether or not the motion should be granted in favor of the moving party. A court may grant summary judgment to the non-moving party when the undisputed facts show that the non-moving party is entitled to summary relief. Cedar did not dispute Mr. Sitthidet loss of

rental income. *Impecoven v. Department of Revenue*, 120 Wn.2d 357, 365, 841 P.2d 752 (1992).

As will be shown below, the facts demonstrate that Cedar is clearly guilty of sixty one (61) violations of RCW 19.86, Washington's Consumer Protection Act,

## II. Elements of a Consumer Protection Act Claims.

Claims under Washington's Consumer Protection Act are based on RCW 19.86.020. That statute reads as follows:

Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

A person injured in his or her business or property by virtue of a violation of RCW 19.86.020 is entitled to recover the damages he or she sustains together with an award of attorney's fees and discretionary trebling of damages. As the statute states in pertinent part:

Any person who is injured in his or her business or property by a violation of RCW 19.86.020. . . may bring a civil action in the superior court. . .to recover the actual

damages sustained by him or her, or both, together with the costs of suit, including a reasonable attorney's fee, and the court may in its discretion, increase the award of damages in an amount not to exceed three times the actual damages sustained: PROVIDED, That such increased damage award for violation of RCW 19.86.020 may not exceed \$10,000.00.

The Supreme Court has formulated the five elements of a Consumer Protect Act claim based upon these two statutes. These are the following:

1. An unfair or deceptive act;
2. Occurring in the course trade or any commerce;
3. Impact on the public interest;
4. Injury to plaintiff in his or her property; and
5. Causation.

*Hangman Ridge Training Stables, Inc., v. Safeco title Insurance Company* 105 Wn.2d 778, 780, 719 P.2d 531 (1986). As will be discussed below, the facts show that each of these elements is satisfied. At very least, Mr. Sitthidet has raised a genuine issue of material fact concerning each of these elements.

### III Cedar is Guilty of Unfair and Deceptive Acts.

#### A. Definition of Unfair or Deceptive Act.

An unfair or deceptive act does not require proof of an actual intent to deceive or that any actual deception occurred. It is necessary only to show that the act had the capacity to deceive a substantial portion of the public. The purpose of the "capacity-to-deceive" test is to deter deceptive conduct before injury occurs. *Hangman Ridge Training Stables, Inc., v. Safeco Title Insurance Company supra*, 105 Wn.2d at 785.

The known failure to reveal something of material importance is a deceptive act under the terms of RCW 19.86. *Indoor Billboard / Washington, Inc. v. Integra Telecom of Washington*, 162 Wn.2d 59, 74-75, 170 P.3d 10 (2007). The charge here involves the purchase and construction of a residence. The failure to disclose material facts in unusual charge amounts to an unfair or deceptive practice.(CP 227) *Griffith v. Centex Real Estate Corp*, 93 Wn.App. 202, 214-15, 969 P.2d 486 (1998); *Carlile v. Harbour Homes, Inc.*, 147 Wn.App, 193, 194 P.3d 280 (2008).

**B. Matters Concerning Fraudulent Billing.**

**I. Introduction.**

Providing incorrect information about the charge (RPT 16, line 19-21, 26-27) and repeated scamming charges are unfair or deceptive practices. In *State v. Ralph Williams*

*Northwest Chrysler Plymouth, Inc.*, 87 word 298, 308 fn 6, 553 P.2d 423 (1976), the Court ruled that an auto dealer's misrepresentation that lending banks required credit insurance amounted to an unfair or deceptive practice. It also held that a contractor's misrepresentation concerning the availability of financing for home repairs was an unfair or deceptive act in *Grayson v. Nordic Construction, Inc.*, 92 Wn.2d 548, 599 P.2d 1271 (1979). And in *Henery v. Robinson*, 67 Wn.App. 277, 834 P.2d 1091 (1992), the Court indicated that a statement made by a mobile home dealer concerning the amount required for a down payment would have been unfair or deceptive if it had been more widely disseminated.

Cedar misrepresented several matters concerning billing and charges detailed below:

- Eleven (11) Charges for Warning to disconnect service after service was already disconnected (RPT 16, line 5-9)
- Twenty four plus (24+) charges for “Service availability” without actual service supplied (CP 173-195).
- Twenty six plus (26+) penalties for charges of service with no service supplied. (CP 173-195).

**Conclusion:** The three types of illegal charges above are systematically wrong and deceptive, customer had no

warning whatsoever of Charges for “Service Availability”;

No public record on the internet for RCW 57.08.081(1) in March-April 1998, before Mr. Sitthideth purchased his home. 1998 was the year this unusual charge was added. Cedar ought to send letter to buyer to disclose “Charge for Availability”. Most internet speed in 1998 was not as fast as today. The trial court erred in assuming the public record was available, no proof in record whatsoever.

All charges (CP 173-195) should have been stopped after Mr. Sitthideth service was disconnected on 11/04/2009. Cedar made Mr. Sitthideth pay high rate, designed for six-person. Cedar commissioners work for Cedar’s interest, by hiking rate 10% a year (CP 257-259). These made Mr. Sitthideth unable to pay their unfair bills, the root cause of the parties’ problems.

Further more, Cedar added scamming charges eleven(11) times (CPR 16, line 13-14) and mislead the trial court to believe they were computer generated mistakes. After the court proceeding was over, the scamming charges also went away. It proves Cedar had control but simply mislead the trial court to avoid liability and penalty in CPA 19.86.090 (CP 250).

C. Matters Concerning Unwilling to cooperate with customer.

After Mr. Sitthideth's water service was disconnected on Nov 4<sup>th</sup>, 2009 (CP 300) until today. Cedar failed to accept Salvation Army assistance on behalf of Mr. Sitthideth, demanding for cash instead of check (CP 303, CP 306). Later Cedar mixed disputed bill making things impossible for Salvation Army to help pay. Cedar worked with the Salvation Army before, it appeared to want to induce 10% penalty on Mr. Sitthideth repeatedly.

D. Matters Concerning Causation of Plaintiff's loss of Rental income.

In March - May 2010, prospective renters wanted to rent Mr. Sitthideth's home for \$2,100/month. Mr. Sitthideth moved out furniture's to prepare his home for rent while pleading with Cedar for water to resolve the issues. See Mr. Sitthideth's attempt to resolve with Cedar in March, April, May, June, July, August of 2010 (CP 307, CP 310 - 315). Also see original Complaint for Declaratory judgment (CP 305 #29.). Cedar ignored his request for water repeatedly. He depends on Cedar's water, to have his home be inspected for rent (RPT 17, line 6-8). The inspection is required by the housing authority before they can subsidize the rent for renters. *Otis Housing Association, Inc. v. Ha*, 165 Wn.2d 582, 588, 201 P.3d 309 (2009).

Without water it is impossible to rent a home (RPT 10 line 18-24, RPT 12, line 6-8). Cedar has clearly caused

Mr. Siththidet to lose rental income, and suffered living without water and sewer for more than two years, with his living condition equal to third world. The trial court assumed Cedar actions were legal even when Mr. Siththideth sustained damages. The trial court failed to look at CPA 19.86.020. To cause damages to any one unfairly is never legal, according to RCW 19.20.090. Cedar had been involved with some level of monopoly violating CPA 19.86.030. All Mr. Siththideth neighbors say Cedar is a monopolized company.

IV. Cedar's Actions Occurred in the Course of Trade or Commerce.

For the purposes of the Consumer Protection Act, the term "trade or commerce" is construed broadly. *Hangman Ridge Training Stables, Inc., v. Safeco Title Insurance Company supra*, 105 Wn.2d at 785. It includes the sale of assets or services or any commerce directly or indirectly affecting the people of the State of Washington. RCW 19.86.010(2). Cedar's activities unquestionably amount to trade or commerce under that definition. This element of Mr. Siththideth's Consumer Protection Act claim should be uncontested.

V. Public Interest Requirement.

The Supreme Court has set out two tests to determine whether the public interest requirement has been met. For consumer transactions, the

following factors govern:

- 1 . Were the alleged acts committed in the course of defendant's business?
2. Are the acts part of a pattern or generalized course of conduct?
3. Were repeated acts committed prior to the act involving plaintiff
4. Is there a real and substantial potential for repetition of defendant's conduct after the act involving plaintiff
5. If the act of plaintiff involved a single transaction, were many consumers affected or likely to be affected by it?

For private disputes, the questions are:

1. Were the alleged acts made in the course of defendant's business?
2. Did the defendant advertise to the public in general?
3. Did defendant actively solicit this particular plaintiff indicating potential solicitation of others?
4. Did the plaintiff and defendant occupy unequal bargaining positions? No one factor is dispositive. The critical issue is potential for repetition.

*Hangman Ridge Training Stables, Inc., 1: Safeco title Insurance Company supra*, 105 Wn.2d at 778, 790-91. It is not necessary to show that other members of the public were injured in the same way as the plaintiff if the potential for repetition exists. *Sign-O-Lite Signs, Inc. v. Delaurenti Florists, Inc.* , 64 Wn.App. 553, 825 P.2d 714 (1992). Under the

circumstances of this case, reasonable people could only conclude that the public interest requirement has been satisfied. Cedar has certainly not demonstrated to the contrary.

Our case is best viewed as a billing for product or service. The Supreme Court defined that term by example in *Hangman Ridge Training Stables, Inc., v. Safeco Title Insurance Company supra*, 105 Wn.2d at 790. It listed cases in which the plaintiff had purchased an item from a seller in the business of selling goods. One of these cases involved the purchase of housing -- a mobile home-and one concerned a farmer's purchase of seed. *Haner v. Quincy Farm Chemicals, Inc.*, 97 Wn.2d 753, 649 P.2d 828 (1982); *Lidstrand v. Silvercrest Industries*, 28 Wn.App. 359, 623 P.2d 710 (1981)

VI. Public Interest Requirement.

Mr. Sitthidet entered into business relationship with Cedar not by choice but by pre-made setup between Cedar and his home builder. They did not warn or disclose to Mr. Sitthidet the unusual charge for "Service availability". There was no public record available. RCW 57.08.081(1) was modified in 1998, the same year he bought the property. Normally it was Cedar responsibility to disclose to new comer, so they can avoid financial loss.

Our case is therefore akin to the relationships the Supreme Court described as essentially consumer transactions" in *Hangman Ridge Training Stables, Inc., v. Safeco title Insurance Company supra*. Therefore, the public interest requirement should be evaluated on the test formulated for consumer billing.

The unfair or deceptive acts were clearly committed in the course of Cedar's business. The unfair or deceptive acts concerning scamming fees were part of a pattern or generalized course of conduct and involved repeated acts. Mr. Sitthidet was locked into unfair charges dictated in RCW 57 without forewarning, if known he would not have bought it. Neither Cedar nor the builder (Murray Franklin) warned Mr. Sitthidet that he will be locked in paying high rate, and for paying service not supplied. It was Cedar who induce the disconnection, by certain corruption as demonstrated in Cedar deposition on July 5ht, 2011. Cedar constantly increases rate, hiring its commissioners to act for its interest (CP 340, line 8-9 ) because it knows RCW 57 requires the commissioners of the district to set high fixed rate on its behalf.

By Cedar's failure to disclose the unusual charge above, Cedar makes its charges illegal while making Mr. Sitthidet suffered Injury both in paying Cedar bill and in financial damages. Cedar constantly added new charges without providing service while refusing to turn water back on for Mr. Sitthidet so he can have his home be inspected for rent (RPT 17, line 6-8). This unfairness violates CPA 19.86.020 even if the court did not find deceptions in Cedar actions. The potential for repetition existed for unfair billing engendered by Cedar and its commissioners by misinterpreting the RCW 57.08.005 in their own favor.

Cedar and its commissioners induced higher financial gains by hiking their fixed rate (CP 257-259) unfairly for a single person to pay equal to six person, then turned around to charge for "Connection Availability" after Cedar cut off service on customer who was unable to keep up with unfair charges. Cedar charges for "Service Availability" are

illegal, this is the root cause for Mr. Sitthideth's financial loss. Cedar kept on adding problems for the parties by refusing to supply water & sewer after Mr. Sitthideth was charged for utility. The sewer was blocked also (RPT 11, line 1-3), photos provided to trial court, Mr. Sitthideth no longer can pay for CP cost. See *Holmes Harbor Sewer District v. Holmes harbor Home Building LLC* *Frontier Bank*, No.76062-4, paragraph 12. **The court of Appeals translates RCW 57.08.081(1) as follow:**

12. ....This subsection gives districts the authority in RCW 57.08.081(1) to generate revenues by fixing rates and charges for service provided. Although this subsection authorizes rates and charges for supplying service, the converse is not necessarily implied that districts can charge when service is not supplied.

13. ....This subsection does not support an interpretation of availability that commences when a district assesses the property and places sewer lines in the street because it contemplates that service can be cut off.

Cedar illegally charged Mr. Sitthideth and added 10% penalty on top of twenty four unfair charges for service not supplied, then repeatedly refused to supply water when Mr. Sitthideth requested(CP 307, CP 310 - 315), so his home can be inspected for rent, to produce income to pay Cedar bill.

Cedar tendency to add 10% penalty illegally was seen since 2003, even after payment was made seven or eight days in advance, Cedar still added it (CP 202).

Under the test for Consumer Protection Act, Cedar had clearly practiced unfairness and had deceived both the consumers and the trial court. The test for violation of RCW 19.86.020 for the public interest requirement is satisfied.

VI. Mr. Sitthidet Suffered Injury.

In the context of a Consumer Protection Act claim, the concept of "injury" is not the same as the concept of "damages." Any injury is sufficient even if it is slight and even if no monetary damages can be proven. If the claimant loses money as a result of the improper conduct, however, the injury requirement is satisfied. *Nordstrom, Inc. v. Tampourlos*, 107 Wn.2d 735,740, 733 Rzd 208 (1987); *Mason v. Mortgage America, Inc.*, 114 Wn.2d 842, 854, 742 P.2d 142 (1990). In *Sign-O-lite Signs, Inc., v. Delaurenti Florists, Inc.*, *supra*, the injury requirement was made out by the claimant having to take time away from her business in order to address matters with the party guilty of the unfair or deceptive act.

Mr. Sitthidet has clearly been injured. He devoted his time and effort to rent his home after being unemployed for five years, and after Cedar disconnected his service for not being able to pay Cedar rate hike.

VII. The Causation Element Is Satisfied.

The element of causation is satisfied if the injured person relies on an unfairness, but not limited to misrepresentation. It is also satisfied if the

injured person loses money as a result of the wrongful conduct. *Edmonds v. John L. Scott Real Estate, Inc.*, 87 Wn.App. 834, 847, 942 P.2d 1072 (1997). Our case involves issues of non-disclosure of issues regarding unusual charge without providing service; In such cases, the causation element does not require an injured party to prove that he or she would not have entered into the business had he known the true facts.

*Schnall v. AT&T Wireless Services, Inc.*, 139 Wn.App. 280, 291-92, 161 P.3d 280 (1997), reversed on other grounds, 168 Wn.2d 125, 225 P.2d 929 (2010).

As indicated, Mr. Sitthidet lost money on this case due to Cedar refusing to let him have water. Cedar has the responsibility to provide customer (Mr. Sitthideth) water and sewer, it did not want to because it demands Mr. Sitthidet to pay its disputed bills first. The disputed bills that was and still is constantly growing higher and higher every day. Cedar wants Mr. Sitthidet money freely, it did not want to give water or goods in return. Its reason behind maybe due to Mr. Sitthidet lawsuit, it uses RCW 57 to hide its retaliation. The Federal law says retaliation is wrong, directly or indirectly. This sufficiently proves causation.

#### VIII. The Trial Court's Decision Was Incorrect.

##### A. Matters Concerning Mr. Sitthidet sustained loss of rental income.

The trial court believed Cedar actions and billing's were legal even though Mr. Sitthidet suffered loss (RPT 18, line 1-2) Both conclusions misapprehended the law.

#### IV. Conclusion.

For the reasons stated, the trial court's conclusion that all issues related to fraudulent charges, Mr. Sitthidet sustained damage would have to be referred to as legal was incorrect.

#### X. The Trial court should not have entered the Judgment

To dismiss Sitthideth's claim for damages as the court recognized that there is unfairness in this matter, and that scamming charges existed. The trial court had excused Cedar's claim for mistakes without penalizing Cedar for violations of RCW 19.86.020. Generally mistakes after the matter went to court is not excusable.

As the preceding discussion demonstrates, it should not have done so. The entry of summary judgment amounts to error for that reason. The trial court should also not have granted judgment in favor of Cedar, because Mr. Sitthidet asked the court if it grants Cedar summary judgment's motion, it should also include Mr. Sitthideth's damages, to offset damages suffered by both parties to avoid another court proceeding. *Loeffelholz v. Citizens for Leaders with Ethics and Accountability Now* (C.L.E.A.N), 119 Wn.App. 665, 694, 82 P.3d 1199 (2004); *Fluor Enterprises, Inc. v. Walter Construction, Ltd.*, 141 Wn.App. 761, 767, 172 P.3d 378 (2004).

Regardless if Cedar is entitled to charge customer without service

supplied; Mr. Sitthidet is entitled to an award for damages because his only source for water was/is through Cedar. Cedar should have worked with customer, and it should have known by shutting off water on Mr. Sitthidet it is liable for the consequence, especially after it imposed charged on him.

It was Cedar who was unfaithful with customers in terms of rate charges and other illegal charges mentioned on page 10. Mr. Sitthidet had no other way to produce income except to rent his property in depression age. The trial court should have at least offset the two awards to both parties. *Marassi v. Lau*, 71 Wn.App. 912, 859 P.2d 605 (1993), to exercise fairness.

**Assignment of Error No. 2** The trial court erred assuming RCW 57.08.081 was available for public research when it was not. RCW 57.08.081(1) was modified in 1998, the same year Mr. Sitthidet purchased his property without warning for unusual charges for “Service availability” (meaning taking the public money freely without giving the product in return). If known beforehand he would not have bought a house to be locked into unfair charges by Cedar.

Cedar did not provide proof in record to show Mr. Sitthidet has been warned for charge for “Connection Availability” (RPT 20, line 21-22), meaning after shutting off service it wants to continue to charge customer endlessly. It called the empty service as “Connection Availability”. Cedar commissioner (CP 345, line 19-22), Mr. Canter does not know if Cedar disclosed or not in 1998, he likes to make assumptions that Cedar provided disclosure. There was no proof whatsoever. The legality for Charges of “Connection Availability” is questionable. On bill, Cedar shows it provided actual service which was not true. By law, any unusual charges should be disclosed to consumer before engagement in business (CP 224).

Further more, 1997-1998 was the rosy economy of President Clinton, someone at that time might have tried to boost income for Water

district. RCW 57.08.081 is harsh for general public in bad economy. In 1997-1998, the internet speed was slow, people used modem nationwide. After 2003 public record online became more accessible. The trial court erred assuming RCW 57.08.081 was available for public research, to excuse for Cedar to not have to disclose unusual charge above (RPT 20, line 20-21).

**Assignment of Error No. 3** The trial court erred by not taking action against Cedar's deceptive acts for generating false charges on plaintiff's repeatedly (charges for warnings to disconnect service after service was already disconnected several months ago), this deception violated CPA 19.86.020, 19.86.030, 1692a, and RCW 57.08.081 itself.

The definition of FDCPA USC 1692a is broad, it does apply to someone like Cedar who collects its own debt (CP 160). Cedar failed to separate disputed bill (CP 247) to be resolved later in court while allowing Mr. Sitthidet have water so his home can be inspected for rent (RPT 17, line 6-8).

Cedar requires Mr. Sitthidet to pay off disputed bill first before it will turn water back on. Cedar does not have such right when Mr. Sitthidet is still a customer who needs water, while disputed bill is

pending for the court decision. Mr. Sitthidet suffered financial damages continuously after he attempted to exhaust. Cedar stopped him from renting his home by making such requirement, he lost rental income to pay Cedar bill while renters waiting to rent his home, they wanted to have home inspection done as required by the Housing authority to subsidize rent for those renters.

The trial erred for failing to see triple negative impacts Cedar caused to Mr. Sitthideth. The trial court should have penalized Cedar for generating false charges, for not separating disputed bills, and for not providing water service for Mr. Sitthideth. Water was needed for home inspection before renting; Cedar obligates Mr. Sitthidet to pay for its utility but did not want to provide utility for him. Mr. Sitthidet sustained loss of \$48,000 as of Oct 4<sup>th</sup> 2011 (RPT 11, Page 19-20).

The trial court asked Cedar if RCW 57 (CP 196) requires customer to make payment in full before turning water back on? (RPT 7, line14-15) Cedar answered: ***“I don’t think that there is anything in the statute that says you shall only accept a one-time payment of the full amount and nothing”*** (RPT 7, line 16-18). Knowingly that it’s wrong, Cedar kept on inflicting pains and losses on Mr. Sitthidet without remorse. In March 2010, again in May 2010 Mr. Sitthidet let Cedar know that he wanted to move away.

This unfair act violates CPA 19.86.020 (CP 249 – 250) twenty four counts, in addition to Cedar misrepresented charges (CP 173-195).

## V. CONCLUSION

The trial court erred by summarily dismissing Mr. Sitthideth's Consumer Protection Act claim for damages and rendering in favor of Cedar. Mr. Sitthidet clearly demonstrated that he was entitled to relief under the Consumer Protection Act. At very least, he raised a genuine issue of material fact during the proceeding of Defendant's summary judgment on July 22<sup>nd</sup>, 2011.

Per Statute 19.86.020, the unfairness and deceptions of Cedar made it liable for Mr. Sitthidet \$48,000 loss in rental income, as of October 4<sup>th</sup>, 2011. Because Cedar prevented him from renting his property. Even after Mr. Sitthidet partially paid his disputed bills Cedar still refused to water and sewer back on. The legislature said Cedar was being unreasonable(CP 307), to intentionally add charges without service supplied. No requiring statute for Mr. Sitthidet to pay disputed bill first while in litigation (RPT 7, line 16-18), Cedar admitted.. By fair trade Cedar should provide service for imposed charges. Since it did not, it is liable for all damages, including two years loss of income, time and legal costs.

For the foregoing reasons, Mr. Sitthidet asks the court of Appeals to award cost for financial damages, including legal expenses, and penalties as the Court sees appropriate, for violating RCW 19.86.020, 19.86.020, FDCPA USC 1692a, and RCW 57.08.081(1).

Dated this 21<sup>st</sup> day of October 2011.

RESPECTFULLY SUBMITTED,



A handwritten signature in black ink, appearing to read 'Khamsing', is written over a horizontal line.

KHAMSING (KAM) SITTHIDETH  
Pro se.

Blank.txt

[seattle craigslist](#) > [south king](#) > [housing](#) > [email this posting to a friend](#)  
[apts/housing for rent](#)

*Stating a discriminatory preference in a housing post is illegal - please flag discriminatory posts as prohibited*

please [flag](#) with care:

[miscategorized](#)

[prohibited](#)

[spam/overpost](#)

[best of craigslist](#)

Avoid scams and fraud by dealing locally! Beware any arrangement involving Western Union, Moneygram, wire transfer, or a landlord/owner who is out of the country or cannot meet you in person. [More info](#)

## **\$2099 / 4br - Beautiful newer home 2200sqf, Section8: Ok (renton)**

Date: 2010-04-01, 4:51PM PDT

Reply to: [hous-tsyhb-1874048689@craigslist.org](mailto:hous-tsyhb-1874048689@craigslist.org) [Errors when replying to us?]

Very convenient location to schools, to shopping malls and to work. NON-SMOKER ONLY! Beautiful 4 bedrooms 2.5 baths, house is located in Renton and has a fenced yard, finished garage, and all appliances! Tons of good shopping malls around, King County Library just a few blocks away, golf course, beautiful park etc.. Upfront payment: First+ last month rent at \$2099. + \$2000 deposit + \$35 background check. Section-8 OK. I would need to know your finance to determine if you are suitable for the property. PLEASE CALL 425 277 7628 and Leave your name and a clear phone number.

For Section-8 renter, this is an estimate! You will pay \$510+510 + deposit + \$35 background check to move in, then \$510/month etc... Section-8 pays the rest.

15405 141st PL SE - Renton, Washington 98058

Pages  
Comments  
Attachments

Pages

### How the Housing Choice Voucher program works

In this section of the Web site, we review important elements of the Housing Choice Voucher program, including: inspections, lead-based paint regulations, and utility allowances.

#### Tenant Screening

You'll want to screen prospective tenants with vouchers the same way you screen other prospective tenants. The Housing Authority initially screens participants for certain elements of criminal history, but it is recommended that you screen them for suitability for your unit. The Housing Authority does make the screening process a little easier by supplying the name, address and telephone number of the last landlord to rent to the tenant, if known. A landlord may charge a screening fee to prospective tenants as long as it is the same fee charged to unassisted tenants.

#### Request for Tenancy Approval

If the prospective tenant passes your screening criteria, they will give you four forms to complete: "Request for Tenancy Approval," "Section 8 Landlord Certification," "Taxpayer Identification Number" and "Lead-Based Paint." You will want to fill out and send these forms to the Housing Authority promptly to begin the process that leads to housing assistance payments.

KCHA will determine if the requested rent is comparable to rents for similar units in the area and will make sure the tenant's portion does not exceed 40 percent of the household's income. If the requested rent fails to meet one or both of these criteria, the Housing Authority will ask you to negotiate a lower rent. There is no obligation to alter the rent. After the forms have been completed and reviewed by the Housing Authority, the unit will be inspected.

#### Inspection Process

To ensure that units are safe and sanitary, the U.S. Department of Housing and Urban Development has established housing quality standards (HQS). An initial HQS inspection is required for a unit to be registered for the Housing Choice Voucher program. After that, it is subject to annual HQS inspections.

Details on the HQS inspection process

Details about lead-based paint regulations

In 2005 the Washington State Legislature passed a bill that requires landlords to inform their tenants about mold. All new tenants after July 24, 2005, and all current tenants by Jan. 1, 2006, must be informed of the health effects of mold, steps to take to avoid mold growth and how to clean up mold.

Learn from the Washington Department of Health how best to comply with the new law

#### Move-In Checklist

State law requires that you and the tenant complete a move-in checklist report, detailing the condition of the rental unit before the tenant has moved in. A copy of this report should be given to the tenant.



An HQS inspector checks an electrical outlet.

Attachments

Comments

Blank.txt

**HOLMES HARBOR SEWER DISTRICT v. HOLMES HARBOR HOME BUILDING LLC  
FRONTIER BANK**

**HOLMES HARBOR SEWER DISTRICT, a special purpose municipal corporation, Respondent, v.  
HOLMES HARBOR HOME BUILDING LLC, a Washington limited liability company, Petitioner,  
FRONTIER BANK; P.O. Kerr, a partnership, Joseph Seabeck and Jane Doe Seabeck, husband and  
wife and the marital community comprised thereof, Defendants.**

**No. 76062-4.**

**Argued Sept. 13, 2005. -- November 23, 2005**

Elaine Louise Spencer, Graham & Dunn PC, Seattle, for Petitioner/Appellant. Rosemary Anne Larson, Michael Paul Ruark, Attorney at Law, Bellevue, for Appellee/Respondent.

¶ 1 This case requires us to determine whether, under chapter 57.08 RCW, a local sewer district may impose monthly charges against unimproved lots that are not connected to the system. We conclude on the facts of this case that under RCW 57.08.081(1), the unimproved lots are not properties to which sewer service is available. Accordingly, we hold that the charges at issue are not statutorily authorized and reverse the Court of Appeals.

**FACTS**

¶ 2 The Holmes Harbor Golf and Yacht Club subdivision, platted in the 1960s on Whidbey Island, contains approximately 500 lots and a golf course. By the late 1970s, individuals had improved only 30 of the lots because the local soils would not support on-site septic systems. Clerk's Papers (CP) at 123-24. The Holmes Harbor Sewer District (District) was formed to provide sewer service to the subdivision.

¶ 3 In 1990, the District formed a utility local improvement district (ULID) to finance the sewer system through bonds and special assessments levied against property within the ULID. The District hired an appraiser to determine the specific benefit each parcel would receive from sewer service, and pursuant to the appraiser's findings, the District charged a special assessment to the property owners. The District constructed sewer lines throughout the subdivision in the right of way adjacent to each lot, with a stub to each property line. The sewer system requires each property to have an on-site septic tank that pumps the wastewater from the individual tanks to the treatment plant for processing.

¶ 4 In June 1995, following completion of the sewer system, the District adopted Resolution 264. CP at 409-19. This resolution governs the use of the system by regulating property connections and locations of on-site sewer facilities. Under this resolution, the District may compel property owners to connect to the sewer when a dwelling or other structure used by humans is situated on any lot within the District and the District gives notice that the property must connect to the system. Property owners are required, at their own expense and in accordance with the District's resolutions, to install on-site facilities on their property before connecting to the sewer system. Before the District approves the connection to the system, property owners must submit a wastewater system hookup application and pay charges and fees, including an application fee, a sewer service connection fee, a system connection charge, delinquent ULID installments, if any, and engineering review and inspection fees. Under this resolution, no guaranteed right to connect to the sewer system is created.<sup>1</sup>

¶ 5 In September 1995, the District adopted Resolution 266, which imposed initial monthly fees of \$25 for connected properties and \$15 for unconnected properties. CP at 459-61. Subsequent resolutions have raised the rates but have retained the \$10 differential. In August 2002, the monthly rates were \$58.33 for connected properties and \$48.33 for unconnected properties. CP at 523. In 2002, fewer than half of the properties in the subdivision were connected to the sewer system.

¶ 6 Petitioner Holmes Harbor Home Building LLC (Home Building) owns approximately 80 unimproved lots and nine tracts that are subject to the charge. These properties generate no sewage and are not connected to the sewer. Home Building refused to pay the monthly charge imposed on each lot. The District instituted an action to enforce the lien against properties owned by Home Building. Both parties moved for summary judgment, seeking a declaratory judgment on the validity of the charges. The trial court deemed the facts to be essentially undisputed. The court held the charges were authorized by RCW 57.08.081(1) but found they were property taxes under *Samis Land Co. v. City of Soap Lake*, 143 Wash.2d 798, 23 P.3d 477 (2001), and thus unconstitutional because they lacked proportionality. The Court of Appeals affirmed the statutory issue but reversed the trial court and concluded the charges were permissible regulatory fees. We granted review to determine the validity of the monthly charges.

## ANALYSIS

¶ 7 The parties contend the validity of the charges turns on whether they are permissible regulatory fees or unconstitutional taxes. However, we initially address whether the statute authorizing water-sewer districts to charge rates for sewer service and facilities, RCW 57.08.081(1), allows the District to assess charges on the properties at issue. In construing the application of this statute to the facts of this case, we also examine subsections of RCW 57.08.005 setting forth the general powers of the districts and subsections of RCW

57.08.081 detailing the charges. We adhere to the principle that when we can resolve a case on statutory grounds, we need not, necessarily, reach the constitutional issue. See *Isla Verde Int'l Holdings, Inc. v. City of Camas*, 146 Wash.2d 740, 752, 49 P.3d 867 (2002).

#### Statutory Authority for Availability Charges

¶ 8 RCW 57.08.081(1) states, in relevant part,

[T]he commissioners of any district shall provide for revenues by fixing rates and charges for furnishing sewer and drainage service and facilities to those to whom service is available .

(Emphasis added.) To determine whether the District may charge the properties, we look to the text of the statute establishing the District's authority. To impose rates and charges, the language of the statute requires districts to furnish some level of sewer and drainage service and facilities. The next question is when that service furnished by the districts is available.

¶ 9 In 1959, the legislature amended this statute's predecessor by changing the phrase “to those receiving such service” to read “to those to whom such service is available.”<sup>2</sup> Laws of 1959, ch. 103, § 11. The Court of Appeals analyzed this amendment when a property owner challenged the validity of sewer service charges on vacant dwellings physically connected to sewer collection and treatment facilities. *Lake Stevens Sewer Dist. v. Vill. Homes, Inc.*, 18 Wash.App. 165, 566 P.2d 1256 (1977). The property owner argued the dwellings were not furnished with sewer service until they were occupied and actual use began. The court properly rejected this argument, recognizing the amendment to the statute makes the availability of the sewer, not actual use, the basis for imposing charges. The court defined availability as commencing when a physical connection is made between the sewer collecting the sewage flow from a parcel of property and the main or trunk sewers of the sewer district. Under this construction, the sewer district could charge properties for furnishing sewer service upon connection to the system, relieving the district from the burden of monitoring when households were actually using the system, as the previous statutory framework seemed to require.

¶ 10 The Court of Appeals returned to the issue of statutory interpretation in *Ronald Sewer District v. Brill*, 28 Wash.App. 176, 622 P.2d 393 (1980). In *Brill*, the property owner challenged the validity of sewer service charges imposed on his property that contained only a garage with no water, sewer, or electricity.<sup>3</sup> Though the improved property was not connected to the sewer system, the court concluded that “the legislature intended to expand the class upon whom sewer service fees could be imposed to include property . which could be, but has not been, connected to district sewer lines.” *Brill*, 28 Wash.App. at 178, 622 P.2d 393. The court relied on the notion that when a statute is amended and a material change is made in the wording, there is a presumption

that the legislature intended to change the law. However, the Lake Stevens decision had also recognized this change in the law and found the legislature intended to change the basis for the imposition of charges from actual use to availability. The decisions differ on the appropriate definition of availability.

¶ 11 The Brill decision distinguished Lake Stevens on the grounds that another statute, which authorized sewer district enforcement against property owners, had not yet been revised and expanded to include properties to which service was available. Brill, 28 Wash.App. at 179-80, 622 P.2d 393 (discussing former RCW 56.16.100 (1977)). The statute allowed districts to enforce the collection of sewer connection charges and sewer disposal service charges against property owners to whom the service is available.<sup>4</sup> The Court of Appeals reasoned that the legislature's use of the term "available" suggested a physical connection is not required. However, this amendment does not define availability and does not provide a basis to conclude the legislature intended a more expansive definition of availability. Since the Court of Appeals' interpretations of the availability statute in Lake Stevens and Brill, the legislature has not amended the statute to provide a clear definition of when service furnished by a district becomes available.

¶ 12 RCW 57.08.005, which governs the general powers of a water-sewer district, provides a context for construing the meaning of availability in RCW 57.08.081(1). RCW 57.08.005(10) authorizes districts "to fix rates and charges for water, sewer, and drain service supplied." This subsection gives districts the authority in RCW 57.08.081(1) to generate revenues by fixing rates and charges for service provided. **Although this subsection authorizes rates and charges for supplying service, the converse is not necessarily implied that districts can charge when service is not supplied.** Unlike the language of RCW 57.08.081(3) (formerly RCW 56.16.100) discussed in Brill, the legislature has not amended this provision to authorize districts to charge for sewer service that is simply available, nor indicated any intent to replace this subsection with any subsection of RCW 57.08.081. We read RCW 57.08.005(10) to require more service than a tentative opportunity to connect. This construction is consistent with the requirement in RCW 57.08.081(1) that some level of service be furnished.

¶ 13 **RCW 57.08.081(5) also suggests that rates and charges authorized by RCW 57.08.081(1) require more than an opportunity to connect for service to be available.** Under this subsection, districts "may also cut off all or part of the service after charges for water or sewer service supplied or available are delinquent for a period of thirty days." RCW 57.08.081(5). This subsection recognizes that charges may be imposed when sewer service is available but provides the recourse of cutting off the service when charges are not paid. Though districts have the right to foreclose, this power is limited to circumstances where validly imposed fees are not paid. Moreover, the legislature specifically provided that districts have the alternative recourse of cutting off service, but this recourse is against properties to which service is available. A property would have

to be connected and using the system to be cut off. This subsection does not support an interpretation of availability that commences when a district assesses the property and places sewer lines in the street because it contemplates that service can be cut off. A district would have nothing to cut off where properties are not connected and have no right to connect.

¶ 14 Though the legislature may not have intended that a physical connection be made for sewer service to be available, the language of RCW 57.08.081(1) requires that some level of service be furnished. The statutory framework governing water-sewer districts also requires more than an uncertain opportunity for an unimproved property to connect to the system, especially in this case where under the resolution the property owners have no right or duty to connect.

¶ 15 In this case, the District considers all property subject to the special assessment in forming the ULID to be property to which sewer service is available. The unimproved properties owned by Home Building, which are not connected to the sewer system, are required to pay monthly charges for some possible benefit of receiving sewer service at some time in the future.<sup>5</sup>

¶ 16 Under the resolution, upon the improvement of the properties, the District may compel property owners to connect to the sewer system; however, property owners have no corresponding right to compel the District to provide sewer service. In contrast to the properties at issue in Brill and Lake Stevens, the properties in this case are unimproved. In this case, the district has taken no action to compel connection, nor do the property owners have a right to connect.

¶ 17 Though the District and property owners expect the District to maintain the sewer system's capacity and to approve connections when properties assessed the special benefit are improved, neither of these events is guaranteed. Before authorizing connection, the District must approve the hookup application, and upon approval by the District, property owners must pay for the installation of on-site facilities and connection to the sewer system. In addition, unforeseen events may operate to reduce the District's ability to serve all assessed properties.

¶ 18 Given that the properties at issue are not improved, are not connected to the sewer system, and have no guaranteed right to connect upon improvement, **we find that sewer service is not available to the properties under RCW 57.08.081(1). Accordingly, we find the charges imposed by the District on the properties at issue are not authorized by RCW 57.08.081(1). We reverse the Court of Appeals and remand to the trial court with instructions to grant summary judgment in favor of Home Building.**

## FOOTNOTES

1. Section 3.8 of Resolution 264, entitled “Resolution Creates No Right to Connect,” provides, “Nothing in this Resolution is intended, nor shall it be construed, to grant to any person or entity any right to connect to the Public Sewer System.” CP at 412.
2. The cases discussed here interpreted the amendment of former RCW 56.16.090 (1991) (repealed by Laws of 1996, ch. 230, § 1702), which contained virtually the same language as RCW 57.08.081(1). The statutes were renumbered in 1996 when the legislature consolidated water and sewer districts into water-sewer districts. RCW 57.02.001 (Laws of 1996, ch. 230, § 101).
3. The resolution allowed the district to charge property for sewer service availability only when it contained a structure that was “habitable” or “available for human occupancy.” The court declined to consider the issue on appeal but remanded to the trial court to determine whether the property met this requirement and thus was subject to assessment within the resolution. Brill, 28 Wash.App. at 180, 622 P.2d 393.
4. In Brill, the court discussed amendments to former RCW 56.16.100, which the legislature repealed in 1996. Laws of 1996, ch. 230, § 1702. The current statute contains similar language but also authorizes districts to enforce the collection of rates and charges for water service supplied. RCW 57.08.081(3).
5. These charges are separate from the initial assessment imposed for the special benefit of potentially increased property values resulting from the construction of the sewer system.

JOHNSON, J.

WE CONCUR: ALEXANDER, C.J., MADSEN, SANDERS, BRIDGE, CHAMBERS, OWENS,  
FAIRHURST, J.M. JOHNSON, JJ.