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SUPREME COURT  
STATE OF WASHINGTON  
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Court of Appeals  
Division I  
State of Washington  
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Court of Appeal Cause No. 83978-1

IN THE SUPREME COURT FOR THE  
STATE OF WASHINGTON

BECKY HOANG, et al.,        )  
                                  )  
                          Petitioners,        )  
                                  )  
                          vs.                    )  
                                  )  
                          TRANG HUYNH NGUYEN,        )  
                                  )  
                          Respondent.        )  
\_\_\_\_\_                          )

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PETITION FOR REVIEW

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marital community

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## I. INTRODUCTION

The object of this petition is to resolve a current lack of clarity concerning the range of cases to which the Mortgage Broker Practices Act (hereinafter “MBPA”) is intended to apply. Like the closely related Consumer Protection Act (hereinafter “CPA”), the MBPA was enacted to protect a vital public interest by preventing the intrusion of unfair and deceptive commercial practices into the market.

In this case, however, Division I found that the MBPA applies to petitioners’ conduct, even though it clearly posed no risk to the public, since it arose out of the unique circumstances of the parties’ relationship, and was unlikely to be repeated. The court reached this conclusion through literal application of terms in the MBPA, without regard to the statute’s context. In contrast, Division II, in *Nationscapital Mortg. Corp. v. State Dept. of Financial Institutions*, determined the provisions of the MBPA should not be so construed, and rather that their application must reflect the legislative intent underlying the statute, which was to prevent the intrusion of unfair or deceptive practices into the market, not to remedy individual injuries.

The inconsistency between Division I’s application of the statute in this case and that of Division II in *Nationscapital*

demonstrates the need for this Court to clarify the scope of the MBPA. Moreover, to effect its public interest objective, the MBPA imposes burdens on parties found to have violated its provisions, treble damages and attorney fees, which typically are not imposed in cases in which defendant causes harm only to individual parties. This renders the clarification particularly important, since in its absence, mistaken application of the statute to entirely private disputes can result in substantial and unwarranted burdens on defendants, as in this case, in which its application to an entirely private dispute has resulted in imposition of more than \$100,000 of liability on the defendants above that which would have been warranted were their obligation simply to have made the plaintiff whole.

## **II. IDENTITY OF PETITIONERS**

Petitioners-Defendants, Becky Hoang and Nhan Hoang, and the marital community comprised thereof, ask this Court to accept review of the Court of Appeals decision designated in Part III, below

## **III. COURT OF APPEALS DECISION**

Petitioners ask this Court to review the decision by Division One in *Trang Huynh Nguyen v. Becky Hoang, et al.*, No. 83978-1-I

filed September 11, 2023. After ordering Respondent Nguyen to file an answer, the Court of Appeals denied Petitioners' motion for reconsideration on November 17, 2023.

A copy of the decision is in the Appendix at pages A-1 through A-12. A copy of the order denying reconsideration is at page A-13. A copy of the order awarding attorney fees and costs is at pages A-14 through A-16.

#### **IV. ISSUE PRESENTED FOR REVIEW**

Did Division One err in holding that the Mortgage Broker Practices Act, in contrast to the Consumer Protection Act, also applies to conduct unique to the relationship between the plaintiff and defendant, rather than solely to conduct affecting the broader public?

#### **V. STATEMENT OF THE CASE**

##### **Procedural History**

Following a bench trial in Snohomish County Superior Court before the Honorable Richard T. Okrent, judgment was entered against Petitioners and Defendants Becky Hoang, Nhan Hoang and their marital community and for Plaintiff and Respondent Trang Huynh Nguyen. CP 32. The court found defendants had engaged in two acts of fraud, three acts of conversion, a breach of fiduciary duty

pertaining to a joint venture agreement, a violation of the MBPA and, thereby, of the CPA. CP 28-21.

The court imposed judgment in plaintiff's favor of \$422,236.85, which included an award under the CPA of \$75,802.80 in attorney fees and treble damages of \$25,000. CP 31-32.

The Court of Appeals affirmed the judgment for Respondent Nguyen on September 9, 2023, and awarded additional attorney fees under the CPA for litigation of the appeal of \$27,618.50. Appendix at A-11-A-12, A-16. Following its ordering Respondent Nguyen to file a response, the court denied Petitioners' Motion for Reconsideration on November 17, 2023. Appendix at A-13.

### **Statement of Facts<sup>1</sup>**

Plaintiff Trang Nguyen moved to the United States from Vietnam in 2015, and has a limited ability to read and write English. RP 13, 15, 97. Her education stopped at the 11th grade; she has held

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1. While the case involved several incidents, petitioners here summarize only facts material to the issue raised this petition.

different jobs while in the United States and she manages her own finances.<sup>2</sup> RP 13, 96-98.

Nguyen met Petitioner Becky Hoang while they both were students in nail school. RP 15. Hoang spoke with Nguyen in Vietnamese, and she spoke Vietnamese well.<sup>3</sup> RP 61.

In approximately August 2019 Nguyen received a gift of \$430,000 from her family to buy a house for herself and her son to live in. RP 15-16. Nguyen planned to purchase a small home, but Hoang recommended that she buy a large house instead, put 20% as down payment, and finance the remainder. RP 21. Hoang told her that with a big home she could rent out the extra space, and that this could help pay the mortgage and give Nguyen time to take care of her son. RP 22

Hoang offered to help Nguyen find a home and to finance it. RP 20. Nguyen knew from nail school that Hoang was a loan officer and could help with the purchase of a home. RP 75.

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2. While Petitioner Becky Hoang's testimony materially differed from that of Respondent Nguyen, since the trial court did not find Hoang to be credible, this statement of facts summarizes solely Ms. Nguyen's account. *See* CP 21.

3. Unless otherwise specified, references to Hoang are to Becky Hoang.



Nguyen found a house in Lynwood, WA. RP 22-23. Hoang arranged the financing, and through her firm and alter ego NB Capital, she took a \$4,824 loan origination fee. RP 333-334. Nguyen paid a total of \$144,232.16 towards the purchase of the house. RP 25-26, 29, 32. Nguyen had trusted Hoang to manage the paperwork for the transaction. RP 25.

Hoang advised Nguyen to add the name of her husband, Defendant Nhan Hoang, to the purchase of a home, because she lacked sufficient income to obtain a bank loan. RP 17, 19. His name was placed on the loan application. RP 19. In the course of securing the financing, Nguyen went to Hoang's office at a mortgage firm on one or more occasions to sign papers. RP 410-411, 672-673.

Nguyen did not agree to give Hoang anything in exchange for helping her to buy the house. RP 120. Nguyen stated that Hoang was a trusting friend and that "she was just helping me out of the goodness of her heart, because I know that she goes to church, so you know, she's being helpful, helping me in that way." RP 120.

Nguyen said she thought she owned the house. RP 32. When Nguyen came to take possession of the house on closing, Hoang told her that she was not eligible to be the owner, which was why Nhan

Hoang was listed as the owner. RP 32-33. Hoang told Nguyen it would take two years before her credit would render her eligible to own the house, and at that time it would be transferred to her name. RP 33. Nguyen stated that Lien, her friend, upon discovering Nguyen's name was not on the Lynnwood house, also told Nguyen that usually after two years, if she works, has good credit and a stable income, she would be able to have her name on the property. RP 123.

Nguyen signed an option to purchase the house in two years for \$610,000 and subsequently made monthly payments of \$3,718 when she moved in, which covered the mortgage. RP 35-36; Plaintiff's Exhibit 20, pp. 2-3. Nguyen testified that she did not recognize the option agreement and that Hoang had not told her she would pay \$610,000 to own the house. RP 37. The option stated Nguyen was to pay \$35,000, but she did not pay that money and Hoang did not ask her to. RP 38.

The court found that the Hoangs had used Nguyen's money to buy Nhan Hoang a house, and that this amounted to fraud and conversion. CP 24. It further found that in arranging the financing for this transaction Becky Hoang had acted as a Loan Originator within the meaning of the MBPA, and thereby violated the MBPA, and

consequently the CPA, by breaching her obligations of honesty, good faith, full disclosure and other fiduciary obligations. CP 30. The court found this violation to have resulted in a loss to Nguyen of \$144,232.16. CP 30.

## VI. ARGUMENT

**IN CONTRAST TO DIVISION TWO, DIVISION ONE DETERMINED THE LEGISLATIVE INTENT UNDERLYING THE MBPA BY DISREGARDING THE CONTEXT IN WHICH IT WAS ENACTED, AND CONSEQUENTLY FOUND IT APPLICABLE TO CONDUCT HAVING NO IMPACT ON THE PUBLIC**

The decision of Division One in this case holding the range of practices within the scope of the MBPA includes personal disputes with no bearing on the public interest conflicts with the determination by Division II in *Nationscapital Mortg. Corp. v. State Dept. of Financial Institutions*, 133 Wn.App. 723, 741, 137 P.3d 78 (2006) that the MBPA was enacted to avoid “the repetition of harmful conduct or activity affecting the broader public.” Particularly since to advance that objective, the MBPA imposes the otherwise unwarranted burden of treble damages and attorney fees on parties found liable under its provisions, it is important the MBPA not be applied to circumstances

to which the Legislature did not intend it apply. *See* RCW 19.86.090, 19.146.100.

Division One found that application of the MBPA is not limited to conduct that affects the broader public interest, as is the CPA, because, in contrast to the CPA, the “plain language of the MBPA has no such requirement.” A-10. In so ruling, Division I applied a method of statutory construction this Court rejected in *Department of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002). Application of that method entails consideration of related statutes and the statutory scheme as a whole, only if the language of the statute is ambiguous. *Id.* at 10. The *Department of Ecology* court explained that approach to statutory construction rests “on theories of language and meaning, now discredited, which held that words have inherent or fixed meanings.” *Id.* at 11 (internal quotation and citation omitted).

In its place, the court adopted an approach to determining plain meaning of a statute that:

requires courts to consider legislative purposes or policies appearing on the face of the statute as part of the statute’s context. In addition, background facts of which judicial

notice can be taken are properly considered as part of the statute's context because presumably the legislature also was familiar with them when it passed the statute. Reference to a statute's context to determine its plain meaning also includes examining closely related statutes, because legislators enact legislation in light of existing statutes.

*Id.* at 11-12.

Applying this method, the *Department of Ecology* court rejected a developer's reliance on RCW 90.44.050's literal assertion that "any withdrawal" of groundwater for domestic uses of 5,000 gallons or less per day was exempt from the permit requirements, and therefore in developing a residential subdivision that would entail the creation of multiple wells, each proposed to withdraw less than 5,000 gallons of water per day, it was exempt from the permit requirement, even though in aggregate the several wells thereby created would withdraw more than that amount. *Id.* at 15-16. Considering that language in the context of provisions in the statute concerning permits for "construction" of wells and other means to withdraw water, and related statutes protecting existing rights and the public interest, the court concluded the legislature's intent to was to exclude such developments from the statutory exemption. *Id.* at 13-16; *see also Washington Public Ports Association v. Department of Revenue*, 148

Wn.2d 637, 645, 62 P.3d 462 (2003) (“[t]he ‘plain meaning’ rule includes not only the ordinary meaning of the words, but the underlying legislative purposes and closely related statutes to determine the proper meaning of the statute”).

Following this contextual method of statutory construction, in *Nationscapital Mortg. Corp. v. State Dept. of Financial Institutions*, *supra*, 133 Wn.App. at 739-742 Division two rejected the contention that language in the MBPA authorizing the review of business records “for the purposes of investigating complaints,” meant such review may not extend to records concerning possible violations of the MBPA that were not the subject of complaints. Explaining “[w]e discern plain meaning not only from the provision in question but also from closely related statutes and the underlying legislative purposes,” the court observed the legislature enacted the MBPA “to promote honesty and fair dealing with citizens and to preserve public confidence in the lending and real estate community’ RCW 19.146.005 [and that] the legislature declared any violation of the Act is a *per se* an unfair or deceptive act or practice and an unfair method of competition for purposes of the Consumers Protection Act (CPA), chapter 19.86 RCW.” *Id.* at 736, 740.

Accordingly, *Nationscapital* relied on cases construing the CPA in explaining the legislature’s designation of violations of the MBPA to constitute conduct prohibited by the Consumer Protection Act:<sup>4</sup>

By declaring violations of the Act to be per se unfair or deceptive acts or practices, the legislature indicated its concern with *detering* deceptive conduct *before* injury occurred. *Hangman Ridge Training Stables, Inc. v. Safeway Title Ins. Co.*, 105 Wn.2d 778, 785, 719 P.2d 778 (1986). And following our case law on the CPA, a public interest declaration suggests that the legislature is not primarily concerned with remedying individual harm but, rather, with avoiding the repetition of harmful conduct or activity affecting the broader public. *See Hangman Ridge*, 105 Wn.2d at 790 (“it is the likelihood that additional plaintiffs have been or will be injured in exactly the same fashion that changes a factual pattern from a private dispute to one that affects the public interest”).

*Nationscapital Mortg. Corp. v. State Dept. of Financial Institutions*, *supra*, 133 Wn.App. at 741.

The distinction between between wrongful acts that are not injurious to the public interest and those which are has been illustrated

4. The propriety of employing the contextual approach to ascertaining the plain meaning of the MBPA is underscored by the statute’s express qualification of its operative terms, including “Loan Originator” and “Borrower,” with the mandate that they not be applied where “the context clearly requires otherwise.” *See* RCW 19.146.010; *see also State v. Morley*, 134 Wn.2d 588, 596-598, 952 P.2d 167 (1998); *Residents Opposed to Kittitas Turbines v. State Energy Facility Site Evaluation Council*, 165 Wn.2d 275, 306-307, 197 P.3d 1153 (2008).

in several cases construing the CPA. In *Behnke v. Ahrens*, 172 Wn.App. 281, 285-287, 292-296, 294 P.3d 729 (2012) in which a lawyer breached his duty to disclose to his client his substantial business connection to the tax shelter operator he had recommended to the client, the court affirmed a grant of summary judgment for the defendant on a CPA claim, explaining “the concern of Washington courts has been to rule out those deceptive acts and practices that are unique to the relationship between plaintiff and defendant.”

In *Burns v. McClinton*, 135 Wn.App. 285, 290-291, 305-306, 143 P.3d 630 (2006), citing the absence of any evidence the defendant’s other clients had been deceived or that the defendant’s deception in this case was capable of being replicated with other clients, the court of appeals held the accountant’s improper use of the “carte blanche” a client had given him over his account to take fees in the amount \$2,500 per month, rather than the agreed upon \$1,500 per month agreed upon with the client, was beyond the purview of the CPA. Addressing the absence of evidence the defendant’s deception in this case was capable of being replicated with other clients, the court noted:



The relationship between Burns and McClinton was unusual, and not only because it included the element of personal friendship. Burns gave McClinton a very high degree of management control over the voluminous details of his personal finances without reading the reports and summaries provided to him.

*Id.* at 306.

It is precisely acts unique to the relationship between Ms. Nguyen and Ms. Hoang that underlay the conduct on which the court based its determination Ms. Hoang violated the Act. Nguyen did not encounter Hoang in the course of seeking to purchase a house, but rather a year before that as a fellow student at nail school. RP 15, 104-105. Indeed, Nguyen, who is Vietnamese, testified that she did not have other friends at the time of the home purchase, that her English was very limited, and that she was able to communicate in Vietnamese with Hoang. RP 15, 61, 97, 681-682.

Nguyen testified that she understood that in facilitating her obtaining a loan to purchase the house Defendant Hoang was acting as a friend: “because in terms of friendship, she came over, and ever since, we got to know each other over a course of a year. You know, she was a trusting friend, so pretty much I put all my trust into her.” RP 120. She understood Hoang would receive no other consideration

for assisting with the loan. RP 120. Nguyen explained her lack of familiarity with a documents pertaining to the transaction was a function of her limited English competence and her having trusted Hoang to manage those documents. RP 25.

It is difficult to imagine circumstances more “unique to the relationship of plaintiff and defendant,” more differing from the typical circumstances under which mortgage brokers operate and less likely to be repeated in other cases than these. Accordingly, this case presents an ideal vehicle through which the Court may clearly delimit the scope of the MBPA, and thereby clarify an important legal question and assure that parties otherwise acting improperly in private matters, not be unfairly burdened with remedies intended to prevent harm to the broader public, rather than solely to make individual parties whole.

## VII. CONCLUSION

For the foregoing reasons, the Court should accept review of the decision below.

DATED this 15th day of December, 2023.

I certify that this document contains 3,081 words, in compliance with the RAP 18.17.

Respectfully submitted,

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and wife and their  
marital community

# APPENDIX

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

TRANG HUYNH NGUYEN,

Respondent,

v.

BECKY HOANG and NHAN HOANG,  
husband and wife and their marital  
community,

Appellants.

No. 83978-1-1

DIVISION ONE

UNPUBLISHED OPINION

MANN, J. — Trang Nguyen sued Becky and Nhan Hoang for violating the Mortgage Broker Practices Act (MBPA), chapter 19.146 RCW, and the Consumer Protection Act (CPA), chapter 19.86 RCW; conversion; fraud; and constructive trust. Following a bench trial, the trial court entered judgment for Nguyen on all claims and awarded \$341,612.74 in damages, \$75,802.80 in attorney fees, and \$4,821.31 in costs for a total judgment of \$422,236.85. The Hoangs appeal and argue that the court erred in: (1) determining the Hoangs were liable under the MBPA, (2) finding the Hoangs liable under the CPA, (3) awarding attorney fees under the parties' joint venture agreement, and (4) failing to segregate the attorney fees. We remand for the trial court

to correct a \$22.00 clerical error for the payment to attorney Douglas Owens. We otherwise affirm. We also award Nguyen her attorney fees on appeal.

I

A

Nguyen immigrated to the United States from Vietnam in August 2015.<sup>1</sup> Nguyen speaks very little English and cannot read documents written in English. She had an 11th grade education in Vietnam.

Nguyen met Hoang in nail school.<sup>2</sup> Hoang learned that Nguyen was expecting a gift of \$430,000 from her father in Vietnam and that Nguyen was interested in buying a home for her and her son. Hoang told Nguyen that she was in the loan business and could help finance a loan. She advised Nguyen to use just a portion of the funds for a down payment and finance the rest. At the time, Hoang was licensed as a loan originator in Washington.<sup>3</sup> On one or more occasions Nguyen met Hoang at Hoang's office and discussed acquiring and financing a home. Nguyen believed that Hoang was acting in her role as a loan originator.

Nguyen found a home she was interested in buying in Lynnwood. She showed the property to Hoang and told her she was interested in purchasing the home. Hoang told Nguyen that she lacked sufficient credit to get a loan. Hoang did not take an

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<sup>1</sup> The facts are based on the trial court's unchallenged findings of fact. Unchallenged findings are verities on appeal. State v. O'Neill, 148 Wn.2d 564, 571, 62 P.3d 489 (2003).

<sup>2</sup> This opinion refers to Becky Hoang by her last name and Nhan Hoang by his full name for clarity.

<sup>3</sup> In February 2021, Hoang's license was suspended for two years by the Washington State Department of Financial Institutions. The charges state that "Respondent Hoang fails to meet the requirements of RCW 31.04.247(1)(e) by failing to demonstrate character and general fitness such as to command the confidence of the community and to warrant a belief that mortgage loan originator[s] will operate honestly, fairly, and efficiently with the purposes of the Act".

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application or present Nguyen's request to a traditional residential lender. Hoang asked Nguyen to find a friend or relative who would cosign a loan. After Nguyen could not find a willing cosigner, Hoang volunteered her husband, Nhan Hoang, to be a cosigner.

The Lynnwood home was priced at \$603,000. Nguyen withdrew \$15,000 and transferred the money to the escrow company for the initial deposit. Nguyen then wire transferred \$129,232.16 to the escrow company for the balance of funds needed to close the sale. At closing, NB Capital Assets was paid a loan origination fee of \$4,824. The fee was not disclosed to Nguyen. NB Capital Assets is an alter ego of the Hoangs. NB Capital Assets was never licensed as a mortgage originator in Washington.

Hoang did not give Nguyen the purchase and sale documents for the Lynnwood home. Nor did Hoang disclose that Nhan Hoang was not a cosigner, but was the sole purchaser of the Lynnwood home. In November 2019, the Lynnwood home was transferred by statutory warranty deed to Nhan Hoang. The \$15,000 down payment and \$129,232.16 closing funds came from Nguyen for the property that was sold to Nhan Hoang. The balance of the purchase price was by a "hard money" loan for \$482,400. The loan had an interest rate of 9.25 percent with monthly payments of \$3,718.50 for interest only. The entire \$482,400 principal matured on December 1, 2020.

After Nguyen moved into the Lynnwood home, Hoang presented her with a Lease and Option Agreement, and told Nguyen, for the first time, that she was not on the title to the property and that the house was owned by Nhan Hoang. The "rent" charged under the lease was \$3,718.50, the same amount as the monthly interest due

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on the loan. The proposed "option to purchase" was for one year at a price of \$610,000. Nguyen required another \$35,000 to exercise the option.

After closing, Nhan Hoang was added as another signer on one of Nguyen's bank accounts from which "rent" was paid. Most payments were made to the loan servicer. Nguyen made all of the \$3,718.50 rent payments until this litigation was filed in September 2020. After that, the tendered rent was refused and Hoang told Nguyen that she and Nhan Hoang planned to sell the home and Nguyen had to move out.

## B

In late 2019 or early 2020, Hoang proposed to Nguyen that she could earn enough from an investment property to enable her to buy the Lynnwood home. Hoang suggested Nguyen invest in a property in Everett. Hoang asked Nguyen to sign a joint venture agreement for the Everett property. The "venturers" were the Hoangs and two companies owned by the Hoangs. The agreement allocated 85 percent interest in the Hoang entities and 15 percent to Nguyen. The joint venture agreement stated that Nguyen owned a company named Azure Investments LLC. No such company existed.

In early February 2020, Hoang prepared a withdrawal slip from Nguyen's savings account at Chase Bank in the amount of \$150,000 payable to Foster & Company. Hoang had Nguyen sign the withdrawal slip. Foster & Company is either an alter ego for the Hoangs or under their control through other entities. The Hoangs did not make an accounting for the \$150,000 either before or after the purchase of the Everett property.

The purchase and sale agreement and loan for the Everett property were at first in Nhan Hoang's name. In late February 2020, the lender and escrow company were



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instructed by one of the Hoangs to change the buyer to Nguyen. In February 2020, Hoang took Nguyen to the Tran Law Group, PS in Seattle to sign documents for the purchase of the Everett property. Hoang instructed Nguyen to sign the closing and loan documents and then stepped out of the room.

Although Nguyen had transferred \$150,000 to Foster & Company, the down payment for the Everett property was only \$74,174.71. Nguyen was not given an accounting for the remaining \$75,825.29 of her funds.

One of the Hoangs arranged for a "hard money" loan from Intrust Funding for the Everett property. The Intrust loan was for \$408,861.15 for a 5-month term, with an interest rate of 12 percent, with a possible 90-day extension for a 2 percent (\$8,177.22) fee. Nguyen was the only borrower for the loan with no mention of a guarantor or any other person or entity responsible for the loan.

In late August 2020, Hoang signed an exclusive sale and listing agreement for the Everett property with Brier Realty. On September 17, 2020, Hoang signed a residential purchase and sale agreement for the sale of the Everett property for \$567,500. All the documents for sale were signed by "Trang H. Nguyen by Becky Hoang as attorney in fact" or "as POA." Hoang did not have a power of attorney for Nguyen that would authorize her to sell real property in Nguyen's name. The attempted sale was done without Nguyen's awareness or consent. The sale was later terminated. Based on the joint venture agreement, the Hoangs, or their business entities, would have claimed 85 percent of the net proceeds leaving only 15 percent for Nguyen.

C

On February 18, 2020, Hoang asked Nguyen to provide a \$56,000 loan to Nhung Nguyen, a friend of Hoang's who was involved in a real estate transaction in Renton and needed money to close the sale. Nguyen agreed based on her perceived friendship with Hoang. Accordingly, \$56,000 was wired from Nguyen's bank account to Chicago Title Company. When the funds were transferred, Hoang represented to Nguyen that the loan would be repaid within a month. But Nguyen only received \$36,000 and \$20,000 was not repaid. Nhung Nguyen testified that she repaid the entire \$56,000 to Hoang.

D

On February 5, 2020, Hoang made a \$2,358.58 payment to attorney Douglas Owens using a debit card from Nguyen's bank account. Owens does not know Nguyen and has never done legal work for her. Owens testified that the payment was for an account receivable for other work he had done for Hoang and was unrelated to any of the other transactions.

E

In October 2020, Nguyen sued the Hoangs for fraud, conversion, quiet title, constructive trust, and violations of the MBPA and CPA. After a multiday bench trial, the trial court entered findings of fact, conclusions of law, and judgment for Nguyen. The court expressly found Nguyen's testimony credible, believable, and supported by documents in evidence. The court found Hoang's testimony not credible.

The trial court concluded that Nguyen provided clear, cogent, and convincing evidence supporting her claims for fraud over both the Lynnwood home and Everett

property transactions. The court found that Hoang's withdrawal of \$150,000 for payment to Foster & Company, and retention of \$20,000 from the loan to Nhung Nguyen supported Nguyen's claim for conversion. While the court found the joint venture agreement an adhesion contract, it also concluded that the Hoangs were liable for breach of their fiduciary duty. The court also found that Hoang's conduct violated the MBPA and that violation supported a violation of the CPA.

The trial court entered judgment against the Hoangs as follows:

Down payment on the Lynnwood home:	\$144,232.16
Payment to Foster & Company:	\$150,000.00
Loan to Nhung Nguyen:	\$20,000.00
<u>Payment to Douglas Owens:</u>	<u>\$2,380.58<sup>4</sup></u>
Total:	\$316,612.74

The court also awarded \$25,000 as treble damages under the CPA,<sup>5</sup> as well as costs and attorney fees of \$80,624.11, for a total judgment of \$422,236.85.

The Hoangs appeal.

## II

The Hoangs argue that the court erred in concluding that Hoang violated the MBPA because she did not qualify as a "loan originator," and the transactions with Nguyen did not affect the public interest. We disagree.

We review the interpretation of a statute de novo. Zervas Grp. Architects, P.S. v. Bay View Tower LLC, 161 Wn. App. 322, 325, 254 P.3d 895 (2011). "If a statute's meaning is plain on its face, then we must give effect to that plain meaning as an

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<sup>4</sup> The parties do not dispute that the correct amount of the payment to Douglas Owens was \$2,358.58. The trial court's judgment appears to include a clerical error. Nguyen agrees that we should remand for the trial court to correct the \$22.00 clerical error.

<sup>5</sup> The CPA grants discretion to award treble damages for violations of the CPA up to \$25,000. RCW 19.86.090.

expression of legislative intent.” Nationscapital Mortg. Corp. v. State Dep’t of Fin. Insts., 133 Wn. App. 723, 736, 137 P.3d 78 (2006). A statute is ambiguous if it is susceptible to more than one reasonable interpretation.

A

The MBPA prohibits loan originators, mortgage brokers, or other persons subject to the act from taking certain actions, including:

- (1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;
- (2) Directly or indirectly engage in any unfair or deceptive practice toward any person; or
- (3) Directly or indirectly obtain property by fraud or misrepresentation.

RCW 19.146.0201. The MBPA defines a loan originator as:

An individual who for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain (i) takes a residential mortgage application, or (ii) offers or negotiates terms of a residential mortgage loan. “Loan originator” also includes a person who holds themselves out to the public as able to perform any of these activities.

RCW 19.146.010(11)(a).

While Hoang’s license was later suspended, at the time of the transactions, she was licensed as a loan originator in Washington State. She also received a loan origination fee of \$4,824, paid to NB Capital Assets, during the closing of the Lynnwood home. Hoang informed Nguyen that she was “in the loan business,” therefore, she could help Nguyen finance her home. Hoang advised Nguyen by “discourag[ing] [Nguyen] from purchasing a mobile home, and advis[ing] her to just use a portion of the funds for a down payment and finance the balance.” Nguyen met Hoang at her office to discuss acquiring and financing a home, and Nguyen believed that Hoang was “acting

in her role as a loan originator.” Similarly, Hoang advised Nguyen that she did not qualify for a loan without taking an application or presenting Nguyen with the option to request a traditional lender based on the large cash down payment Nguyen had available. Hoang confirmed that Nguyen met her at two offices that she worked at, the Freedom Mortgage Office and the Fairway Independent Mortgage Corporation Office. Hoang testified “I’m just a loan originator.” Hoang meets the definition of a loan originator under the MBPA, and her actions violated RCW 19.146.0201(1)-(3). The trial court did not err in concluding that Hoang was a loan originator.

B

Relying on Behnke v. Ahrens, 172 Wn. App. 281, 285-87, 294 P.3d 729 (2012), and Burns v. McClinton, 135 Wn. App. 285, 290-91, 143 P.3d 630 (2006), Hoang argues that because her transactions with Nguyen were private and did not affect the public interest, there is no violation of the MBPA. But neither Behnke, nor Burns, address a violation of the MBPA.

In Behnke, a case involving the CPA, a lawyer breached his duty to disclose to his client his substantial business connection to the tax shelter operator he had recommended to the client. 172 Wn. App. at 285-87. The court affirmed the trial court’s dismissal of the case, holding that no violation of the CPA had been shown because the record failed to demonstrate “a real and substantial potential for repetition.” Behnke, 172 Wn. App. at 295-96. The court reasoned, “the concern of Washington courts has been to rule out those deceptive acts and practices that are unique to the relationship between plaintiff and defendant.” Behnke, 172 Wn. App. at 292-93.

In Burns, another CPA case, the plaintiff recovered under the CPA based on his accountant's breach of contract and breach of fiduciary duty through having taken \$2,500 monthly fees from the plaintiff's account, over which the plaintiff had given him "carte blanche," rather than the agreed upon \$1,500. 135 Wn. App. at 290-91. The Court of Appeals reversed, citing the absence of any evidence that the defendant's other clients had been deceived and the lack of evidence that the defendant's deception was capable of being repeated with other clients. Burns, 135 Wn. App. at 290-91.

But Nguyen brought her claim under the MBPA. Hoang is correct that the CPA ordinarily requires the plaintiff in a private action to "establish that the act or practice is injurious to the public interest." RCW 19.86.093. The plain language of the MBPA, however, has no such requirement. Indeed, the MBPA declares that the brokering of residential loans substantially affects the public interest:

The legislature finds and declares that the brokering of residential real estate loans substantially affects the public interest, requiring that all actions in mortgage brokering be actuated by good faith, and that mortgage brokers, designated brokers, loan originators, and other persons subject to this chapter abstain from deception, and practice honesty and equity in all matters relating to their profession. The practices of mortgage brokers and loan originators have had significant impact on the citizens of the state and the banking and real estate industries. It is the intent of the legislature to establish a state system of licensure in addition to rules of practice and conduct of mortgage brokers and loan originators to promote honesty and fair dealing with citizens and to preserve public confidence in the lending and real estate community.

RCW 19.146.005. The MPBA also declares that a violation of the act affects the public interest and is a per se violation of the CPA.

The legislature finds that the practices governed by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Any violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act or practice and unfair method

of competition in the conduct of trade or commerce in violation of RCW 19.86.020. Remedies provided by chapter 19.86 RCW are cumulative and not exclusive.

RCW 19.146.100.

The trial court did not err in concluding that Hoang's actions violated the MBPA, and thus the CPA.

III

The Hoangs challenge the trial court's award of attorney fees, arguing that the trial court based its fee award on the joint venture agreement which limited attorney fees to arbitration. The Hoangs also argue that the trial court erred in failing to segregate the attorney fees award.

The record, however, reflects that Nguyen requested attorney fees under the CPA. Similarly, the trial court's written order awarded attorney fees and costs under the CPA. The court's written order does not mention attorney fees under the joint venture agreement.

There is nothing in the record showing that the Hoangs objected to an award of attorney fees under the CPA.<sup>6</sup> Nor did the Hoangs object to Nguyen's motion for attorney fees or request that the attorney fees be segregated. Generally, we will not consider issues raised for the first time on appeal. RAP 2.5(a); State v. McFarland, 127 Wn.2d 322, 332-33, 899 P.2d 1251 (1995). We decline to reach the Hoangs' challenge to the award of attorney fees.

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<sup>6</sup> In their reply brief, the Hoangs assert that they did object to attorney fees during oral argument before the trial court. The Hoangs' objection, however, was to an award of attorney fees under the joint venture agreement. There is no discussion of the CPA.


IV

Nguyen argues that because she prevailed, she is entitled to reasonable attorney fees for the costs incurred in defending this appeal. We agree.

A party prevailing on appeal is entitled to “recover attorney fees authorized by statute, equitable principles, or agreement between the parties.” Thompson v. Lennox, 151 Wn. App. 479, 484, 212 P.3d 597 (2009). If the fees are recoverable at trial, they are also recoverable on appeal. Thompson, 151 Wn. App. at 484.


The trial court awarded reasonable attorney fees and costs as allowed under the CPA. RCW 19.86.090. Nguyen’s appeal successfully defended the MBPA and CPA claim. Upon compliance with RAP 18.1, we award Nguyen reasonable attorney fees on appeal.

We remand for the trial court to correct the \$22.00 clerical error for the payment to attorney Douglas Owens. We otherwise affirm.

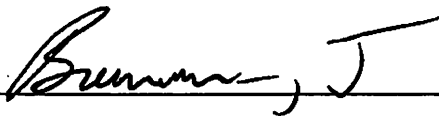


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WE CONCUR:



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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

TRANG HUYNH NGUYEN,  
Respondent,

v.

BECKY HOANG and NHAN HOANG,  
husband and wife and their marital  
community,

Appellants.

No. 83978-1-I


DIVISION ONE

ORDER DENYING MOTION  
FOR RECONSIDERATION

Appellants Becky Hoang and Nhan Hoang moved to reconsider the court's opinion filed on September 11, 2023. Respondent Trang Huynh Nguyen filed an answer. The panel has determined that the motion for reconsideration should be denied. Therefore, it is

ORDERED that the motion for reconsideration is denied.

FOR THE COURT:

  
\_\_\_\_\_

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

TRANG HUYNH NGUYEN,

Respondent,

v.

BECKY HOANG and NHAN HOANG,  
husband and wife and their marital  
community,

Appellants.

No. 83978-1-I

COMMISSIONER'S RULING  
AWARDING ATTORNEY FEES  
AND COSTS

On September 11, 2023, this Court issued a published opinion affirming a judgment entered for respondent Trang Nguyen against appellants Becky and Nhan Hoang. This Court remanded solely for the trial court to correct a clerical error in the judgment. This Court awarded attorney fees to Nguyen subject to compliance with RAP 18.1. On November 11, 2023, this Court denied the Hoangs' motion for reconsideration.

Meanwhile, pursuant to RAP 18.1, Nguyen filed a revised affidavit of counsel and a cost bill, requesting an award of attorney fees and costs totaling \$29,587.75. This amount includes the fees incurred in preparing a response to the Hoangs' motion for reconsideration (\$3,616.50) and costs (\$310.25). After an extension, the Hoangs filed an objection, arguing that Nguyen's attorney fees improperly include fees on post-trial collection matters. Nguyen did not file a reply.

Attorney fees incurred on post-trial collection matters are not attorney fees on appeal. See Hepler v. CBS, Inc., 39 Wn. App. 838, 848 n.3, 696 P.2d 596 (1985)

No. 83978-1-I

(disallowing fees incurred on trial court matters such as drafting a writ of execution to enforce a judgment because such fees were not appellate fees). Accordingly, the following fees totaling \$1,659 objected to by the Hoangs are disallowed:

- \$316 for 0.8 hours spent on July 6, 2022 reviewing judgment liens and ordering liens and encumbrance report to determine if there was equity in properties to support a foreclosure.
- \$711 for 1.8 hours spent on July 14, 2022 filing a motion for order of supplemental proceedings.
- \$632 for 1.6 hours spent on December 15, 2022 attending supplemental proceedings in Snohomish County Superior Court.

After the reduction of \$1,659, the adjusted amount of the requested fees (\$27,618.50) is reasonable. Reasonable attorney fees are based on the number of hours reasonably spent, multiplied by a reasonable hourly rate. Berryman v. Metcalf, 177 Wn. App. 644, 660, 312 P.3d 745 (2013). This calculation does not turn solely on what the prevailing party's firm can bill. Nordstrom, Inc. v. Tampourlos, 107 Wn.2d 735, 744, 733 P.2d 208 (1987). "Courts must take an *active* role in assessing the reasonableness of fee awards, rather than treating cost decisions as a litigation afterthought. Courts should not simply accept unquestioningly fee affidavits from counsel." Berryman, 177 Wn. App. at 657 (quoting Mahler v. Szucs, 135 Wn.2d 398, 434-35, 957 P.2d 632 (1998)). The amount of Nguyen's fees is reasonable for this appeal and supported by counsel's affidavit and descriptions of work performed on this appeal. Thus, attorney fees totaling \$27,618.50 are awarded to Nguyen.

Nguyen requests an award of costs in the amount of \$310.25 incurred in obtaining copies of the clerk's papers. Such costs are allowed under RAP 14.3(a).

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Accordingly, attorney fees in the amount of \$27,618.50 and costs in the amount of \$310.25, totaling \$27,928.75 are awarded to Nguyen. Therefore, it is

ORDERED that attorney fees and costs in the amount of \$27,928.75 are awarded to respondent Trang Nguyen. Appellants Becky and Nhan Hoang are jointly and severally liable for this award and shall pay this amount.

*Masako Hanzawa, Commissioner*

**December 18, 2023 - 11:45 AM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division I  
**Appellate Court Case Number:** 83978-1  
**Appellate Court Case Title:** Trang Huynh Nguyen, Respondent v. Becky Hoang, et ano, Appellants  
**Superior Court Case Number:** 20-2-04888-5

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