

Jul 19, 2016, 12:15 pm

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No. 93123-2

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 46906-5-II

COURT OF APPEALS, DIVISION TWO  
OF THE STATE OF WASHINGTON

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Key K. Kim, Appellant

v.

Fay Servicing, Respondent

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APPELLANT'S REPLY BRIEF

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James K. Kim, WSBA# 28331  
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Lakewood, WA 98499  
253-274-0201

 ORIGINAL

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*Hangman Ridge Training Stables, Inc. v. Safeco Title Ins.Co.*, 105 Wn.2d 778, 790, 917 P.2d 531 (1986)..1

## ARGUMENT

### THE ACT NEED NOT HAVE THE CAPACITY TO DECEIVE A SIGNIFICANT PORTION OF THE PUBLIC IN A PRIVATE DISPUTE

The question of whether Fay Servicing's act(s) was or was not unfair or deceptive should be a matter of fact. Fay servicing, even though they were initially contacted by Mr. Kim's Korean speaking attorney, chose to communicate exclusively with Mr. Kim. They chose to call Mr. Kim directly without ever notifying his attorney of their intent to do so and communicated solely with him. They knew about Mr. Kim's linguistic limitations; that he spoke only simple English. When Mr. Kim kept asking for explanations, they chose to tell him that they would contact him again with an interpreter. This is with the knowledge that he had a Korean speaking attorney. It would have been a simple call for them to make to the attorney, especially when their decision was not to grant a modification and that the borrower simply did not understand what he was being told. Instead, they kept him waiting by telling him that they would call again with an interpreter. The call that never came. It is this statement that kept Mr. Kim from seeking other options. This statement was deceptive, whether intentional or not.

The unfair or deceptive act need not have the capacity to deceive a significant portion of the public in a private dispute such as the dispute between the parties in the instant case. In a private dispute, it is sufficient to show: (1) The alleged acts committed in the course of defendant's business? (2) Did defendant advertise to the public in general? (3) Did defendant actively solicit this particular plaintiff, indicating potential solicitation of others? (4) Did plaintiff and defendant occupy unequal bargaining positions? *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins.Co.*, 105 Wn.2d 778, 790, 917 P.2d 531 (1986).

CONCLUSION

For the foregoing reasons, Key Kim respectfully requests that the matter be remanded to trial court.

RESPECTFULLY Submitted this 19<sup>th</sup> day of July, 2016



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James K. Kim, WSBA# 28331  
Attorney for Petitioner

CERTIFICATE OF SERVICE

I, James K. Kim, certify under penalty of perjury that on the 19<sup>th</sup> day of July, 2016, I caused a copy of Petition for Review to be served upon Adam Hughes via electronic mail at the following electronic mail address:

ahughes@afrcr.com

Dated this 19<sup>th</sup> day of July, 2016 at Lakewood, Washington



James K. Kim

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James K. Kim

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