

NO. 74266-3

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COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION 1

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CITY FIRST MORTGAGE SERVICES, LLC

Appellants

v.

GLOGOWSKI LAW FIRM, PLLC

Respondents.

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SUPPLEMENTAL BRIEF OF APPELLANT

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**BADGLEY MULLINS TURNER, PLLC**  
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COURT OF APPEALS  
STATE OF WASHINGTON  
DIVISION 1

At the hearing on this matter on November 4, 2016, a Panel Member asked City First's counsel a number of pointed questions on the issue of City First's liability in the Underlying Case; particularly with respect to liability under a theory of vicarious liability or a finding of concerted action between City First and Loveless or Mullen. The Panel Member indicated that City First must demonstrate that, as a matter of law, it was exempt under the statutes it was ultimately found vicariously liable under. This is incorrect because City First must only demonstrate that a genuine issue of material fact remains as to both whether City First could have been found vicariously liable and whether City First did not act in concert with Loveless and Mullen.

Glogowski failed to call either Loveless or Mullen in the Underlying Case. The declaration of Paul Loveless corroborates City First's denial that it did not act in concert with him with respect to the Lease-Back Agreement with the Collings, CP 1012-16. It is essential to note that Glogowski failed to set forth any evidence in defense of City First against a finding of vicarious liability in the Underlying Case. Repl. Br. of Appellant 6-15. Had she entered evidence setting forth the course and scope of Loveless and Mullen's employment and their testimony, the issue would have at least been adequately preserved for appeal.

A Member of the Panel also posited that because there was an appeal in the Underlying Case that this somehow undercuts City First's malpractice action. To the contrary, the failure to create an adequate record for City First's appeal in the Underlying Case was part of Glogowski's malpractice. It is for this very reason that an action for legal malpractice exists. A litigant cannot point to insufficient representation as a basis for overturning a jury's verdict. Indeed, Washington law holds that a failure to properly preserve an issue for appeal is a basis for a claim of legal malpractice. *Clark County Fire Dist. No. 5 v. Bullivant Houser Bailey P.C.*, 180 Wn. App. 689, 715, 324 P.3d 743 (2016).

City First's demonstration that Glogowski did not put forth adequate evidence to demonstrate that City First was not vicariously liable in the Underlying Case and that it did not act in concert with Loveless and Mullen is more than sufficient to defeat summary judgment in a malpractice action which requires that a jury must decide causation unless "reasonable minds could not differ." *Smith v. Preston Gates Ellis, LLP*, 135 Wn. App. 859, 147 P.3d 600 (2006) (citing *Hertog v. City of Seattle*, 138 Wn. 2d 265, 979 P.2d 400 (1999)).

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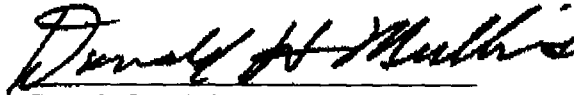
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Dated this 6<sup>th</sup> day of December, 2016.

Respectfully submitted,

BADGLEY MULLINS LAW GROUP PLLC

A handwritten signature in black ink, appearing to read "Donald H. Mullins", written over a horizontal line.

Donald H. Mullins, WSBA #4966  
Daniel A. Rogers, WSBA #46372  
Attorneys for Appellants

**CERTIFICATE OF SERVICE**

I, Staci Wilkie, paralegal for BADGLEY MULLINS TURNER PLLC, attorneys for Appellant in the above entitled action, hereby certify under penalty of perjury that I am over the age of eighteen (18), and am competent to testify to the facts contained herein. On the 6<sup>th</sup> day of December, 2016, I served by sending a true and correct copy in the manner indicated below of the following documents:

**1. SUPPLEMENTAL BRIEF OF APPELLANT**

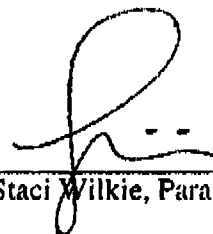
upon the attorneys of record herein, as follows, to wit:

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