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No. 64254-5-1

**COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON**

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COURTNEY SHIMADA and JENNY SHIMADA, individually, on behalf of their marital community, and on behalf of their minor children, MIYA SHIMADA and KOBE SHIMADA,

Plaintiffs/Appellants,

vs.

THE QUADRANT CORPORATION, a Washington Corporation;  
WEYERHAEUSER REAL ESTATE COMPANY, a Washington Corporation; and WEYERHAEUSER COMPANY, a Washington Corporation,

Defendants/Respondents.

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**BRIEF OF APPELLANTS**

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## I. INTRODUCTION

The trial court's summary dismissal of the Shimadas' claims against Weyerhaeuser Company, Weyerhaeuser Real Estate Company ("WRECO") and The Quadrant Corporation must be reversed. The claims are based on violations of Washington's Consumer Protection Act, RCW 19.86, fraud, negligence, negligent misrepresentation and outrage. The claims arise from Quadrant's deceptive and fraudulent acts and omissions during its marketing and sales efforts to induce the Shimadas to buy a Quadrant built home in 2003 as well as Quadrant's continued fraudulent and negligent acts occurring in late 2007 and early 2008 when defects and associated mold contamination were discovered inside the Shimadas' home. There are, at minimum, issues of material fact regarding the Shimadas' claims and the trial court's summary dismissal should be reversed.

## II. ASSIGNMENTS OF ERROR

1. The trial court erred when it determined there were no genuine issues of material fact with respect to the Shimadas' claims against The Quadrant Corporation for violations of Washington's Consumer Protection Act, RCW 19.86, fraud, negligence, negligent misrepresentation and outrage and summarily dismissed those claims.

2. The trial court erred when it determined that there were no genuine issues of material fact with respect to the Shimadas' claims against defendants Weyerhaeuser and WRECO for violations

of Washington's Consumer Protection Act, RCW 19.86, fraud, negligence, negligent misrepresentation and outrage and summarily dismissed those claims.

3. The trial court abused its discretion when it denied the Shimadas' CR 56(f) motion to continue WRECO and Weyerhaeuser's motions for summary judgment.

### **III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Did the trial court commit reversible error when it dismissed the Shimadas' claims against The Quadrant Corporation for violations of Washington's Consumer Protection Act, RCW 19.86, fraud, negligence, negligent misrepresentation and outrage when

- (a) the Shimadas presented evidence establishing that Quadrant had and breached its duty to disclose material facts as a homebuilder/vendor to them;
- (b) the Shimadas reasonably relied upon Quadrant's representations of the quality and safety of its homes;
- (c) the evidence demonstrates that the Shimadas suffered and continue to suffer specific and general damages as a result of Quadrant's acts and omissions, establishing genuine issues of material fact as to causation;
- (d) there were genuine issues of material fact with respect to the Shimadas' claims for outrage; and
- (e) the economic loss rule does not apply to any of the Shimadas' claims because they were not in contractual privity with Quadrant and suffered physical injuries and harm to other property due to the defective conditions in their Quadrant-built home and as a result of Quadrant's negligent and fraudulent acts and omissions?

2. Did the trial court abuse its discretion when it denied the Shimadas' timely and supported CR56(f) motion to continue WRECO and Weyerhaeuser's motions for summary judgment where the court had failed to rule on two previously-filed motions to compel basic discovery and the moving defendants had not produced a single document in discovery?

#### **IV. APPELLANTS' STATEMENT OF THE CASE**

##### **A. Weyerhaeuser, Weyerhaeuser Real Estate Company and The Quadrant Corporation.**

Weyerhaeuser Company (hereinafter "Weyerhaeuser") is a forest products company that engages in real estate construction and development. CP 666; 741. Weyerhaeuser Real Estate Company (hereinafter "WRECO") is a wholly owned subsidiary of Weyerhaeuser. CP 666. WRECO has five wholly owned subsidiaries that build homes in various areas of the United States. CP 666. The Quadrant Corporation (hereinafter "Quadrant") is one of WRECO's wholly owned home building subsidiaries. CP 666.

Quadrant designs, develops, produces, markets and sells homes in large, pre-planned residential communities in both Washington and Oregon. CP 5. Quadrant has produced and sold thousands of homes in Washington. CP 5; 745.

Quadrant markets and strategically targets the sale of its homes to first-time homebuyers and young families. CP 6. Quadrant knows that babies, toddlers and young children live in the homes it produces and markets for direct sale and subsequent resale. CP 6.

##### **B. Quadrant's Marketing and Sales Activities - 2003.**

Courtney and Jenny Shimada are a young couple with two

small children, Kobe (age 3) and Miya (age 4). CP 4; 771; 776; 798-800; 812. In January 2003, the Shimadas (then recently married but without children) were anticipating starting a family and investigated the purchase of their first home. CP 771; 798-800; 812. During their housing search, the Shimadas were attracted by Quadrant's marketing efforts in the Woody Creek residential development located in Snoqualmie, Washington. CP 771; 797. Quadrant had set up model homes, balloons and banners to attract potential homebuyers. CP 771; 797. Between January and May 2003, the Shimadas toured Quadrant model homes, received literature from Quadrant about its homes and spoke repeatedly with Quadrant's agents and employees. CP 771; 797.

During their investigation, the Shimadas told Quadrant and its representatives that they did not want to purchase a poorly-constructed home even if such a home would have a lower purchase price than other homes in the area. CP 349. They had no interest in purchasing a Quadrant home if "more home for less money" meant simply buying a bigger box that was so poorly constructed that it was unsafe to live in. CP 349; 771; 798-99.

During discussions with Quadrant and its sales representatives, the Shimadas specifically asked Quadrant about the

quality and safety of Quadrant homes. CP 349; 771-72; 798-800. The Shimadas specifically asked Quadrant about mold and mold contamination in homes. CP 349; 771-72; 798-800. Quadrant and its sales representatives assured the Shimadas that no mold and moisture related problems existed in Quadrant built homes because Quadrant used only high quality production materials, employed sound building practices and because of Quadrant's on-going safety checks and overall supervision Quadrant implements during the construction process. CP 8; 349; 772; 801; 806-07; 810.

To respond to the Shimadas' concerns of mold contamination in Quadrant homes, Quadrant repeatedly discussed with the Shimadas its construction practices, its walk-thru policies, its commitment to quality assurance and the overall quality of its homes. CP 8; 349; 772; 803; 805; 810. To further reinforce the safety and quality of Quadrant homes, Quadrant representatives also specifically represented to the Shimadas that Quadrant built homes were environmentally healthy and a safe place in which the Shimadas could raise their children. CP 8; 349; 772; 806-07; 834.

1. Representations Regarding Previously Sold Quadrant Homes.

During Quadrant's sales and marketing activities with the Shimadas, Quadrant told the Shimadas that when deciding to buy either a "new" or "used" Quadrant home, no Quadrant home (whether "new" or "used") is a bad choice. CP 803. Quadrant never indicated or represented any difference in quality between a "new" Quadrant home (i.e., a home that it built under a contract with a customer) and a "used" home (i.e., a home that it built for a customer and which the customer later put on the market to sell). CP 774; 803-05; 813. After Quadrant's representations to the Shimadas, the Shimadas reasonably believed that the quality of a "new" Quadrant home was indistinguishable from a "used" Quadrant home. CP 773-74; 803-05; 813. In fact, to demonstrate the similarities in quality between a new and used Quadrant home, a Quadrant sales representative showed the Shimadas her own Quadrant home which she had listed for sale. CP 774; 802.

2. Quadrant's Knew About Mold and Moisture Related Problems in 2003.

Quadrant, Weyerhaeuser and WRECO have known since at least 2001 that Quadrant homes are so poorly constructed that water and moisture infiltration commonly exist in Quadrant homes resulting

in property damage, the growth of hazardous mold, and unhealthy and sickening air. CP 6-7; 772; 187-298; 868-1172. By 2003, Quadrant knew that its hurried 54-day production process, especially in our wet, rainy climate, resulted in sealing excess moisture within the homes which caused the growth of unhealthy mold in crawl spaces, attics and wall cavities. CP 9-10; 187-298; 868-1172. Other problems common to Quadrant homes exacerbated the unhealthy mold condition, including improperly-built roofs that allow water into the attic and improper venting of HVAC systems and appliances. CP 9-10; 187-298; 868-1172.

3. Documents Produced in this Litigation Also Establish Quadrant's Knowledge.

Quadrant produced documents in this litigation that establishes that Quadrant knew that a very high percentage of its homes (across many of its communities) commonly suffered from water leaks, water damage, mold and mold contamination, and other construction and environmental defects requiring very expensive remediation and repair. CP 781; 868-1172. Importantly, these documents establish knowledge of these common problems dating back to at least 2001 – years before Quadrant directly made misrepresentations to the Shimadas. CP 781; 868-1172. Since at

least 2001, Quadrant knew that mold and water problems were making many of its homeowners and their children sick with asthma and other respiratory illnesses. CP 868-1172. Documentary evidence also demonstrates that when homeowners notified Quadrant of health and respiratory issues suffered by resident children and adults, Quadrant continued their false and misleading representations to homeowners and the public<sup>1</sup>. CP 996-97. Even “model” and “showcase” homes Quadrant displayed and marketed had moisture infiltration problems. CP 974. The rampant mold and moisture contamination in Quadrant homes, coupled with Quadrant’s substandard response to alleviate such problems, resulted in many lawsuits against Quadrant for mold and moisture related problems common to its homes<sup>2</sup>. CP 1094-96.

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<sup>1</sup> Quadrant cannot dispute the dangerous and sickening effects mold and mold exposure can have upon the residents of its homes. This record contains the sworn declarations of competent physicians and peer-reviewed medical studies indicating that chronic respiratory illness results from exposure to molds. CP 753-766; 862; 1180-87.

<sup>2</sup> Over 30 former and current Quadrant homeowners sued Weyerhaeuser, WRECO and Quadrant in 2004 because of mold contamination within their homes, which caused health problems and illness. CP 187-298; 781; *See Sayles, et. al., v. The Quadrant Corporation, et. al.*, King County Superior Court Case No. 04-2-36117-6 SEA. Weyerhaeuser, WRECO and Quadrant ultimately agreed to repurchase homes in Snoqualmie Ridge and other

The documents produced in this litigation by Quadrant also establish that during the same time the Shimadas were discussing buying a Quadrant home with Quadrant representatives, Quadrant was investigating and responding to defects, water damage and mold contamination in many of the homes it by then constructed and sold to an unsuspecting public. CP 773; 868-1172.

AMEC Earth & Environmental (Weyerhaeuser, Quadrant and WRECO's environmental contractor) (hereinafter "AMEC") documents confirm that Quadrant knew that mold and moisture related problems exist in a large number of its homes. CP 9-14; 187-298; 772; 868-1172. In one limited sampling, AMEC found at least 50 Quadrant homes that were plagued by moisture induced and created mold. CP 13; 187-298. The AMEC documents show that Quadrant investigated and found numerous moisture and mold contaminated homes in just the Snoqualmie Ridge Quadrant development – the same development where the Shimadas live. CP 187-298.

4. Testimony Establishes Quadrant's Knowledge of Problems Prior to its Interactions with the Shimadas.

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Quadrant developments because of moisture infiltration and mold issues within its homes. CP 187-298; 781.

The testimony of Dominic Menchaca, Quadrant's production manager, also confirmed Quadrant's knowledge of and efforts to conceal the serious moisture-related problems suffered by many Quadrant homeowners. CP 191-98; 781. Mr. Menchaca testified that he was personally aware of at least 20 home in Quadrant's Northwest Landing development alone in which Quadrant documented mold and moisture contamination. CP 191-98; 781. Mr. Menchaca also testified that Quadrant's policy was to withhold information of these dangerous problems from Quadrant homeowners<sup>3</sup>. CP 11; 191-98; 781-82. Mr. Menchaca further testified that Quadrant's Director of Construction, Wes Guyer, agreed to mislead Quadrant homebuyers by directly concealing the fact that mold had been found in their home:

- Q. Did you instruct or did you talk to Wes Guyer about your policy of not telling homeowners that mold had been discovered in their home?**
- A. Yes.
- Q. When did you talk to Mr. Guyer about that policy?**
- A. I don't know.

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<sup>3</sup> Quadrant's policy to withhold information of dangerous and faulty conditions found and/or known to exist in Quadrant homes is also supported by documents produced by Quadrant. CP 899. The record supports a finding that Quadrant intentionally withholds information and fails to notify its homeowners of any number of defects contained within its homes – from faulty bathroom seals to mold and moisture problems. CP 11; 191-98; 781-82; 899.

**Q. Was it in 2004 after this first home was discovered?**

A. That would be a safe bet.

**Q. Okay. What did he say to you?**

A. "Okay."

**Q. So he concurred with your decision to not tell homeowners the instances where mold was found in their home?**

A. Yes.

CP 191-98; 773-74 (emphasis added).

The fact that mold and moisture problems are common to Quadrant homes is not surprising. These problems are the direct result of Quadrant's hurried assembly-line construction and rigid 54 day construction schedule that results in defective workmanship (e.g., misvented dryer vent), lack of supervision and encasing wet building materials in a closed home. CP 5-6. Despite its knowledge of these common problems, Quadrant and its representatives concealed these defects from the Shimadas – even after the Shimadas specifically inquired about these issues. CP 8-9; 11-14; 349; 771-72; 798-801; 803; 805-07; 834; 810.

C. The Shimadas Purchase a Quadrant Home.

Relying upon Quadrant's statements and omissions in 2003 regarding the quality and safety of its homes, the Shimadas viewed a previously-sold Quadrant home in the Snoqualmie Ridge

development. CP 8-9; 349-50; 774-75; 803; 814-15. The Shimadas purchased this home in 2003. CP 8-9; 775; 796.

D. Discovery of the Dangerous Defects.

1. Misvented Dryer Vent.

In December 2007, the Shimadas observed that their clothes dryer took a long time to dry clothing. CP 775; 821. They contacted Sears to investigate the problem and learned that their clothes dryer was venting directly into a wall cavity rather than to the outside of their home (a safety hazard and code violation to which Quadrant later admitted). CP 11; 775; 822. As a result of the misvented dryer vent, their dryer had for years been pumping hot, humid air into the cavities of the home. CP 11; 775; 822. A venting company subsequently removed over 32 gallons of dangerous and flammable debris from the Shimadas' wall cavity. CP 775; 822.

2. Mold and Hole in Roof.

On December 17, 2007, the Shimadas upstairs washing machine leaked. CP 775; 823-24. Within a few hours of the leak, the Shimadas hired McClincy's Water Loss professionals to dry and remediate the affected area. CP 775; 840. McClincy's successfully dried the affected area within the same day the leak occurred. CP

775; 840. McClincy's confirmed that there was no moisture in the Shimada home from the washing machine leak. CP 840.

William Markey, an independent insurance claims adjuster, observed McClincy's remediation work just days after the washing machine leaked. CP 775; 1176-178. Mr. Markey testified that McClincy's did one of the most thorough jobs drying the Shimadas' residence that he has seen in his 30 years as a claims adjuster. CP 775; 1176-178.

### 3. Significant Mold Contamination Discovered.

As part of their work, an employee of McClincy's inspected the Shimadas' attic and observed mold actively growing in the Shimada attic. CP 14; 775-76; 841-42; 847-48. His investigation also revealed a one foot by one foot hole in the Shimadas' roof. CP 11; 820. This was an original construction defect that resulted in moisture, mold and pests entering their attic and interior spaces. CP 11; 820.

#### E. Quadrant Failed to Inform the Shimadas of Mold Problems in 2007/2008.

In late 2007, the Shimadas contacted Quadrant and reported the mold, hole in their roof and misvented dryer vent. CP 351; 776. Quadrant "inspected" the Shimada home and reported its findings, concealing from the Shimadas that mold and excess moisture are

problems common to Quadrant homes. CP 11-14; 349-52; 776. Relying upon Quadrant's current 2007 and 2008 (as well as its earlier misrepresentations) misrepresentations and omissions, the Shimadas continued to reside in their dangerous and unhealthy Quadrant home. CP 12-14; 351-52; 776. With additional investigation, the Shimadas learned, for the first time, about the dangerous mold and moisture infiltration problems in Quadrant homes. CP 351; 776.

F. Quadrant Refuses to Test and Conceals Problems.

In response to the mold in the Shimadas' home, Quadrant hired Bales Cleaning and Restoration (hereinafter "Bales") to inspect their home and devise a response. CP 495. Based on high moisture levels throughout the Shimada residence, Bales set up drying equipment in several areas of the Shimada home. CP 495. Quadrant then hired AMEC to perform an additional evaluation of the Shimada home. CP 12-14; 495. Despite the Shimadas' requests, Quadrant refused to do any pre-or post-remediation air quality testing in the home. CP 12-14; 351; 776-77; 825. Instead, Quadrant pressured the Shimadas to agree to its remediation plan on a "take it or leave it" basis. CP 12-14; 777; 826. Concerned for their family, the Shimadas wanted to understand the health impacts on their

children and refused to allow Quadrant to rush through an incomplete and hasty repair. CP 777; 826-27.

G. Mold Testing Confirms Health Problems.

Michelle Copeland, a certified industrial hygienist, investigated and confirmed the presence of high levels of mold and particulate matter in the interior of the Shimadas' home, attic and crawl space. CP 776; 856; 858. Ms. Copeland also discovered elevated mold levels in the Shimadas' master bathroom, the windowsills of the master bathroom and in one of the Shimadas' children's rooms. CP 776; 857.

Both Ms. Copeland and McClincy's Danny Reeves testified that any responsible remediation plan to remove the mold within the Shimada home must include pre- and post-remediation air quality testing<sup>4</sup>. CP 777; 843-44; 859-861. Ms. Copeland testified that without conducting pre- and post-remediation testing, there is no way to reasonably remediate or to know whether a remediation, once done, has been effective. CP 777; 843-44; 859-861.

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<sup>4</sup> Ms. Copeland testified that the U.S. Environmental Protection Agency also recommends that mold remediation protocols include pre- and post-remediation air quality testing. CP 860. She testified that such testing is critical to determine whether the mold removal protocol, once implemented, actually worked and removed the identified contaminant(s). CP 860.

Ms. Copeland testified that the misvented dryer vent substantially increased the moisture level in the attic for several years and caused the mold growth in the Shimadas house. CP 856; 861-62. Given the immediate clean up of the washer leak and the locations and extent of mold found, Ms. Copeland and Mr. Reeves both concluded that the washer leak was not a source of the mold contamination inside the Shimadas' house. CP 775; 845-47; 862; 1175-178.

H. Procedural History.

On April 17, 2008, the Shimadas filed this lawsuit against Weyerhaeuser, WRECO and Quadrant, claiming violations of the consumer protection act (RCW 19.86), fraud, negligence, negligent misrepresentation and outrage. CP 3-26. On June 6, 2008, the Shimadas served written discovery requests upon Weyerhaeuser, WRECO and Quadrant requesting documents related to the Shimadas' home; documents relating to complaints from Quadrant residents regarding mold and indoor air quality issues in Quadrant homes; and analysis and investigations performed by Defendants regarding mold, air quality, or heating and ventilation systems in Quadrant homes. CP 430-459; 461-474. The Defendants failed to provide responsive discovery until May 2009, when only Quadrant

produced a limited number of responsive documents. CP 359. Weyerhaeuser and WRECO never provided any documents to the Shimadas. CP 358-360; 461-474; VRP 5-6.

On August 9, 2009, Weyerhaeuser, WRECO and Quadrant filed Motions for Summary Judgment. CP 486; 652. Quadrant moved for summary dismissal of all the Shimadas' claims. CP 486-512. With respect to the 2003 misrepresentations, Quadrant asserted that it had no duty to inform the Shimadas of known defects; that the Shimadas did not reasonably rely upon (or justifiably rely upon) Quadrant's representations regarding the quality of its homes. CP 486-512. With respect to the 2007/2008 misrepresentations and remediation activities, Quadrant asserted that it had no duty to disclose known defects and dangers and that the Shimadas suffered no harm from either Quadrant's concealment or negligent and inadequate remediation plan. CP 486-512. Quadrant also argued that the economic loss rule precludes the Shimadas' tort claims. CP 486-512.

Weyerhaeuser and WRECO moved separately from Quadrant for summary dismissal of all of the Shimadas' claims asserting that neither Weyerhaeuser nor WRECO could be held vicariously liable for Quadrant's actions. CP 652-662.

Because of the Defendants' refusal to provide document discovery, the Shimadas responded to both motions and also filed a motion to continue under CR 56(f). CP 673-681; 769-791. On September 4, 2009 the trial court granted the Defendants' motions for summary judgment and dismissed all claims<sup>5</sup>. CP 1251-54. The Shimadas timely appealed. CP 1249-1250.

## V. ARGUMENT AND AUTHORITIES

### A. Standard of Review.

In reviewing a grant of summary judgment, the Court of Appeals engages in the same inquiry as the trial court and applies a *de novo* standard of review. *Bainbridge Citizens United v. Washington State Dept. of Natural Resources*, 147 Wn. App. 365, 198 P.3d 1033 (2008). In considering a motion for summary judgment, the Court must consider all facts and reasonable inferences in the light most favorable to the nonmoving party. *Wilson Court Ltd. Partnership v. Tony Maroni's Inc.*, 134 Wn.2d

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<sup>5</sup> The precise basis for the trial court's dismissal of the Shimadas' claims is not clear from the record. What is clear is that the trial court granted Quadrant's motion on grounds entirely different than those presented by Quadrant in its motion for partial summary judgment. VRP 64-65. Quadrant raised and briefed specific issues related to its duty to inform; reliance and damages. CP 486-512. The trial court did not address these arguments, or appear to consider or rule on them as part of the motion hearing. See VRP 1-68.

692, 952 P.2d 590 (1998). Summary judgment is only appropriate when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. *Ranger Insurance Co. v. Pierce County*, 164 Wn.2d 545, 192 P.3d 886 (2008). The Appellate Court limits its review to only those issues before the trial court. *Alexander v. Gonser*, 42 Wn. App. 234, 711 P.2d 347 (1985).

B. Quadrant's Duty/Failure to Disclose.

Quadrant wrongly asserted in its motion for partial summary judgment that it did not, as a matter of law, have a duty, first in 2003 and then later in 2007/2008, to disclose known defects common to its homes. CP 486-512.

1. Quadrant's Duty to Disclose Material Facts.

It is well-established in Washington that a builder-vendor has a general, on-going duty to disclose material facts in a real estate transaction if the facts are not easily discoverable by the buyer<sup>6</sup>. See *Carlile v. Harbour Homes, Inc.*, 147 Wn. App. 193, 194 P.3d

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<sup>6</sup> In the sale of residential dwellings, the doctrine of *caveat emptor* no longer applies to the complete exclusion of any moral and legal obligation to disclose material facts not readily observable upon reasonable inspection by the purchaser. *Atherton Condo. Apartment-Owners Ass'n Bd of Dirs. v. Blume Dev. Co.*, 115 Wn.2d 506, 523, 799 P.2d 250 (1990).

280 (2008) (reversing grant of summary judgment); *Griffith v. Centex Real Estate Corp.*, 93 Wn. App. 202, 969 P.2d 486 (1998) (also reversing grant of summary judgment); *McRae v. Bolstad*, 101 Wn.2d 161, 676 P.2d 496 (1984) (“failure of a salesman to disclose information has long been recognized as the basis for an action under RCW 19.86.”) The record confirms that the Shimadas presented sufficient evidence to create a genuine issue of material fact regarding Quadrant’s failure to comply with its duty to disclose reoccurring material dangers and defects common to its homes. As the record amply establishes, Quadrant has known for years that its homes are commonly plagued with environmental and construction deficiencies and defects that expose infant children and adult residents to serious health risks and illnesses. CP 5-15; 187-298; 772-73; 781-82; 868-1172. As a builder/vendor placing thousands of homes into Washington’s stream of commerce, Quadrant has a duty to disclose known dangers that are not easily discoverable by its home buyers. This is particularly true where the Shimadas made specific inquires to Quadrant regarding mold and air quality issues<sup>7</sup>.

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<sup>7</sup> The Shimadas toured Quadrant homes for several months in 2003. CP 8-9; 771; 797. They received printed marketing

i. 2003.

During the Shiamadas direct interactions with Quadrant in 2003, the Shimadas specifically asked Quadrant and its sales representatives about the quality and construction of Quadrant built homes. CP 8-9; 349; 771; 798-99. In response, Quadrant and its representatives repeatedly stated that it only uses high quality production materials; employed only sound building practices; that there would not be mold or air quality concerns; and that Quadrant built homes are of the highest quality because of the safety checks and overall supervision Quadrant uses during the construction process. CP 8-9; 349; 772; 801; 810.

The record establishes that the Shimadas specifically inquired about mold and moisture contamination within Quadrant homes. The record also establishes that Quadrant representatives misrepresented the truth relating to mold and other related quality issues in a Quadrant homes. CP 8-9; 772; 806-07.

Quadrant, Weyerhaeuser and WRECO knew since at least 2001 that Quadrant knew or should have known their representations were untrue and that hazardous mold caused

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materials from Quadrant and spoke repeatedly with Quadrant's agents and employees. CP 8-9; 771; 797.

sickness and potential sickness of its homes' occupants. CP 5-15; 187-298; 772-73; 781-82; 868-1172.

The record also establishes that Quadrant devised and adhered to an internal policy of intentionally withholding and failing to disclose their knowledge of mold and moisture contamination within Quadrant homes. CP 8; 11; 191-98; 772-74; 806-07.

ii. 2007/2008.

The record amply supports the Shimadas' claim that Quadrant breached its general duty to disclose in 2007/2008 based on its knowledge of mold and moisture contamination common within its homes and by failing to correct its misrepresentations when the Shimadas specifically asked Quadrant about mold and moisture contamination within its homes. *See Carlile v. Harbour Homes, Inc.*, 147 Wn. App. 193, 194 P.3d 280 (2008); *Griffith v. Centex Real Estate Corp.*, 93 Wn. App. 202, 969 P.2d 486 (1998); *McRae v. Bolstad*, 101 Wn.2d 161, 676 P.2d 496 (1984). In December 2007, when the Shimadas discovered a misvented dryer vent and bathroom fan, a hole in their roof, and mold growing inside their home, Quadrant misrepresented again, that their home was built with quality and was safe and healthy to live in. CP 11-14; 351-52; 775-76; 822; 841-42; 847-48. Quadrant again concealed

its knowledge of similar mold and moisture related problems in its homes to the Shimadas. CP 11-14; 349-52; 776. Quadrant also misrepresented the scope of the problem offering the Shimadas a negligent and incomplete remediation plan<sup>8</sup>. CP 11-14; 351; 776-77; 825. Quadrant also refused to conduct pre- or post-remediation air quality testing in the Shimada home. CP 11-14; 351; 776-77; 825.

On summary judgment, Quadrant did not and could not dispute that many of its homes have known issues with moisture infiltration and mold or that these issues were of material concern to the Shimadas. CP 1232-1236. Quadrant only argued that it did not have a duty to disclose and as supported by the record, the Shimadas produced more than sufficient evidence to create a genuine issue of material fact and establish Quadrant's duty to disclose its knowledge of mold and moisture infiltration in 2003 and

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<sup>8</sup> At the trial court, Quadrant asserted that it "gratuitously agreed to investigate the Shimadas' residence." CP 504. Although the Shimadas disagree with Quadrant's characterization of its role in this matter, at a minimum, when Quadrant elected to investigate the Shimada home, it created another set of duties for itself in its alleged capacity as a volunteer. *See Price ex rel. Estate of Price v. City of Seattle*, 106 Wn. App. 647, 24 P.3d 1098 (2001). Quadrant subsequently breached these duties by failing to exercise reasonable care by increasing the risk of harm to the Shimadas by improperly and negligently attempting to remediate their home. CP 12-14; 351; 776-77; 825.

later in 2007/2008. The trial court erred in dismissing the Shimadas' claims.

2. Duty to Disclose – Consumer Protection Act (RCW 19.86).

The Shimadas also presented sufficient evidence to establish Quadrant's duty to disclose with respect to their CPA claims. Washington's Consumer Protection Act (RCW 19.86) places upon residential builder-vendors a duty to disclose when the builder-vendor's failure to disclose amounts to an unfair or deceptive act or practice. *Griffith v. Centex Real Estate Corp.*, 93 Wn. App. 202, 969 P.2d 486 (1998) (confirming that the CPA creates a duty to disclose); *see also Carlile v. Harbour Homes, Inc.*, 147 Wn. App. 193, 194 P.3d 280 (2008). A duty to disclose under the CPA can arise where the builder-vendor fails to disclose known defects in its homes. *Carlile v. Harbour Homes, Inc.*, 147 Wn. App. at 212-13.

*Carlile v. Harbour Homes, Inc.* is particularly instructive. In *Carlile* ten original and subsequent purchasers of residential homes brought several claims against Harbour Homes, the builder-vendor, including claims for misrepresentation and violations of the Consumer Protection Act. *Carlile*, 147 Wn. App. at 198-99. The

homeowners asserted that Harbour Homes engaged in unfair or deceptive acts by failing to disclose known defects in its homes and by making affirmative representations of quality, workmanship, and construction in its marketing materials and then failing to provide homes that met the standards Harbour represented. *Id.*

Following arbitration of the homeowners' claims, the trial court granted Harbour Homes' motion for summary judgment and dismissed the homeowners' claims against the builder-vendor, including the homeowners' CPA claims. *Id.* This Court later reversed the trial court's summary dismissal of the homeowners' CPA claims because the homeowners presented evidence that established genuine issues of material fact. *Id.*

The homeowners presented evidence that showed that Harbour Homes made affirmative representations of quality to the homeowners, yet the homes later were discovered to suffer from deficiencies that were not only contrary to the builder-vendor's representations of quality, but that also caused the homes to experience excessive deterioration and damage. *Carlile*, 147 Wn. App. at 212<sup>9</sup>. Because of the magnitude of the defects in the

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<sup>9</sup> Harbour Homes similarly provided marketing materials with affirmative representations of quality to the homeowners and

homes, this Court reversed the trial court's summary dismissal of the homeowners CPA claims because the defects were 1) material; 2) not easily discoverable; and 3) a question of material fact existed regarding whether it was an unfair act or practice under the CPA for Harbour Homes' to fail to disclose these known defects to its homebuyers. *Carlile*, 147 Wn. App. at 213.

The same analysis holds true here. Identical to the builder-vendor in *Carlile*, Quadrant delivered a home that did not live up to its representations of quality to the Shimadas and failed to disclose known defects. CP 5-15. Quadrant specifically told the Shimadas that they would not have to worry about mold and moisture issues if they bought a Quadrant home. CP 8; 772; 806-07. Quadrant even represented that there is no distinction in quality between a new or used Quadrant home. CP 774; 803-05; 813. Quadrant representatives repeatedly told the Shimadas that mold and moisture contamination problems within Quadrant homes are not an issue

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represented that its homes are made with high quality material and workmanship. *Id.* Harbour Homes represented to each homeowner that during the course of home construction, each of its homes is inspected several times by Harbour Homes' quality control managers. *Id.* The deficiencies alleged by the homeowners included the builder's failure to properly seal and protect the homes from weather and moisture, resulting in water intrusion, rot, and mold in the homes. *Id.*

because Quadrant used only high quality production materials and employed sound building practices. CP 8; 349.

Just like the builder-vendor in *Carlile*, Quadrant failed to provide a home to the Shimadas that met the standards it represented. At least three original construction defects have been found in the Shimadas' home – the misvented dryer vent, misvented bathroom fan, and the hole in the roof. CP 11; 775; 820; 822. The Shimadas presented uncontroverted expert testimony that the misvented dryer vent caused and/or significantly contributed to the mold and moisture contamination within the Shimada residence, a contamination problem that Quadrant homes commonly suffer from. CP 856; 861-62.

As with the builder-vendor in *Carlile*, Quadrant also failed to disclose known problems of mold and moisture infiltration in its homes to the Shimadas—a second basis recognized by this Court as an actionable unfair or deceptive act under the CPA. *Carlile*, 147 Wn. App. at 212. The environmental problems in the Shimadas home are material (they specifically inquired about such defects before buying a Quadrant home) and are caused by the substandard workmanship and construction defects contained in their home.

Quadrant cannot dispute that these common defects and problems were not easily discoverable by the Shimadas.

In the trial court, Weyerhaeuser, WRECO and Quadrant relied upon *Nguyen v. Doak Homes*, 140 Wn. App. 726, 167 P.3d 1162 (2007) for the proposition that a builder-vendor does not owe a duty to disclose to a subsequent purchaser (like the Shimadas). CP 508. *Nguyen* is entirely distinguishable from this case however, because unlike the subsequent home purchaser in *Nguyen* who never had any pre-sale interaction with the builder-vendor, the Shimadas had direct pre and post-sale contact with Quadrant and its representatives, received marketing materials and specifically relied upon Quadrant's representations regarding the quality of its homes (whether "new" or "used") when choosing to purchase a Quadrant home. CP 775; 796.

*Nguyen* is also distinguishable because in that case, the only evidence of the builder-vendor's unfair or deceptive act was a report detailing failures to comply with industry building standards. *Id.*, at 733-34. In this case, the Shimadas' claims are based on the deficiencies in construction as well as Quadrant's affirmative representations of quality construction, supervised building, and safe

and healthy homes. In such circumstances, *Nguyen* is inapposite. See *Carlile*, 147 Wn. App. at 214.

Quadrant's "subsequent purchaser" argument also fails for other reasons. "As a general rule and as a matter of legislative intent, neither the CPA nor caselaw require privity of contract in order to bring a CPA claim alleging an unfair or deceptive act or practice." *Holiday Resort Community Ass'n v. Echo Lake Associates, LLC*, 134 Wn. App. 210, 219, 135 P.3d 499 (2006). As this Court explained in *Holiday Resort Community Ass'n*, "on numerous occasions, our courts have rejected the argument that a contractual relationship must exist to sue under the CPA for an unfair or deceptive act or practice." *Id.* at 219-20. It is also well-established that claims for negligent misrepresentation and common law fraud do not require privity of contract. *Haberman v. Washington Public Power Supply System*, 109 Wn.2d 107, 162-69, 744 P.2d 1032 (1987)

Viewing the evidence in a light most favorable to the Shimadas, the record amply supports a finding that Quadrant's failure to disclose known defects in its homes in 2003 and again in 2007/2008 constitutes an unfair or deceptive act. The trial court erred in dismissing the Shimadas' CPA claims because the

Shimadas have made a showing that Quadrant's failure to disclose is an unfair and deceptive act under the CPA.

C. The Shimadas Reasonably Relied Upon Quadrant's Representations Regarding the Quality of Its Homes.

At the trial court, Quadrant argued that the Shimadas did not reasonably rely upon Quadrant's representations of quality during its marketing and sales activities in 2003. CP 486-512. The trial court erred in summarily dismissing the Shimadas' claims as a matter of law because the record supports a finding that the Shimadas reasonably relied upon Quadrant's representations in 2003. At the very least, a question exists for the trier of fact.

Justifiable reliance means that the reliance was reasonable under the surrounding circumstances. *Lawyers Title Ins. Corp. v. Baik*, 147 Wn.2d 536, 55 P.3d 619 (2002). Whether a party justifiably relied upon a misrepresentation is an issue of fact. *ESCA Corp. v. KPMG Peat Marwick*, 135 Wn.2d 820, 828, 959 P.2d 651 (1998). Washington court's consistently deny motions for summary judgment that seek to establish a lack of reasonable reliance as a matter of law. See *Demelash v. Ross Stores, Inc.*, 105 Wn. App. 508, 20 P.3d 447 (2001); *Security State Bank v. Burk*, 100 Wn. App. 94, 995 P.2d 1272 (2000).

In its motion for summary judgment, Quadrant argues that the Shimadas' claims could not have reasonably relied upon Quadrant's false and misleading representations in 2003 because Quadrant alleges it informed the Shimadas that its homes are "handmade products" and if Quadrant made such representations, it was "puffing." CP 506-508. These arguments are contrary to the undisputed evidence or represent disputed facts precluding summary judgment.

Quadrant also erroneously argued that since the Shimadas had a home inspector inspect their home before buying it, that they cannot blame Quadrant for any later discovered defects that caused moisture related problems. CP 507. Quadrant's argument fails because the defects and contamination are not easily discoverable. The general quality of a house, by its very nature, is nearly impossible to fully determine by inspection after the house is built, since many of its most important elements are hidden from view. *Norris v. Church & Co., Inc.*, 115 Wn. App. 511, 63 P.3d 153 (2002) (quoting *Christensen v. R.D. Sell Constr. Co.*, 774 S.W.2d 535, 538 (1989)).

The ordinary consumer can determine little about the soundness of the construction but must rely upon the fact that the

vendor-builder holds the structure out to the public as fit for use as a residence, and of being of reasonable quality. *Id.* The record also establishes that the Shimadas' inspection was done after they entered into a purchase and sale agreement to purchase a Quadrant home; and that the Shimadas' home was inspected only because the lender required a home inspection as part of their loan qualification process. CP 816-19. Moreover, the results of the inspection were only one factor that the Shimadas considered in making their final decision to purchase a Quadrant home. CP 819 - 20. The inspection does not immunize Defendants nor support a conclusion that the Shimadas did not rely upon Quadrant's misrepresentations.

There is sufficient evidence and inferences in the record to find that the Shimadas justifiably relied upon Quadrant's representations of quality when purchasing a Quadrant home.

D. Genuine Issues of Material Fact Exist Regarding the Injuries Caused by Quadrant's Fraudulent Misstatements and Omissions.

Quadrant also argued on summary judgment that the Shimadas were not harmed by Quadrant's acts and omissions. CR 486-512. Causation and proximate cause are factual issues left almost exclusively for the jury's consideration. *See Shellenbarger*

*v. Brigman*, 101 Wn. App. 339, 3 P.3d 211 (2000); *Brown v. Stevens Pass Inc.*, 97 Wn. App. 519, 984 P.2d 448 (1999). The trial court erred in dismissing the Shimadas' claims because the record supports a finding that the Shimadas have suffered damages – both general and specific – as a result of Quadrant's fraudulent misstatements and omissions in 2003 and later in 2007/2008.

1. The Shimada Family Has Suffered Injury.

Quadrant argued that there is no causal connection between its acts in 2003 and later in 2007/2008 and the Shimadas injuries; however, the Shimadas produced ample evidence to establish that Quadrant's acts and omissions injured the Shimadas. The record reflects that the Shimadas relied upon Quadrant's representations of quality and omissions in purchasing their Quadrant home in 2003 and later in 2007/2008, when the Shimadas chose to continue to reside in their Quadrant home based upon Quadrant's representations of quality and safety. CP 8-9; 12-14; 351-52; 775-76; 796.

In 2007/2008, the Shimadas learned for the first time that Quadrant homes commonly suffer from mold and moisture infiltration, but they learned this only after relying upon Quadrant's

misrepresentations and omissions. CP 351; 776. The Shimadas testified that when they discovered mold contamination in their home in 2007/2008, they continued to reside in their Quadrant home because they relied upon Quadrant's assurances that it would properly test and remediate the mold discovered in their home; and, they believed Quadrant's representations and omissions that its homes were built with quality and are actually safer and healthier to live in than other homes. CP 11-14; 351; 776; 788.

The Shimadas produced the uncontroverted expert testimony of Dr. Catherine Karr and Dr. Robert Harrison. CP 753-766; 1180-187. Dr. Robert Harrison is a Clinical Professor of Medicine at the University of California, San Francisco. CP 754. Dr. Harrison testified that to a reasonable medical probability the dangerous indoor air quality documented in the Shimadas' home has caused and is causing both Courtney and Jenny Shimadas' respiratory and skin problems, including nasal and sinus irritation, inflammation, congestion, eczema and respiratory irritation. CP 753-766.

Dr. Catherine Karr is an Assistant Professor at the University of Washington's Department of Pediatrics. CP 1181. Dr. Karr

testified that to a reasonable medical probability the dangerous indoor air quality documented in the Shimadas' home has caused and is causing both Kobe and Miya's respiratory and skin problems including nasal and sinus irritation, inflammation, congestion, cough, eczema and upper respiratory infections. CP 1180-187.

The record establishes that the Shimadas reasonably relied upon Quadrant's misrepresentations and omissions in 2003 and later in 2007/2008, and as a result suffered injuries.

2. The Shimadas' Property is Damaged.

Quadrant does not dispute that the Shimadas' Quadrant home has been damaged and is now contaminated with mold and moisture contamination. CP 14-15; 496. In fact, Quadrant agrees that repairs and remediation are necessary and appropriate and presented no evidence below to rebut the Shimadas' evidence that the misvented dryer vent is the cause of the moisture and mold issues in their home. CP 775; 845-47; 861-62; 1175-178. The record establishes that the Shimadas' house has been damaged as a result of Quadrant's fraudulent and negligent acts and omissions.

E. The Economic Loss Rule is Inapplicable.

Quadrant moved for summary judgment on the basis that the Shimadas' claims are somehow barred by the economic loss rule.

CP 486-512. This is patently incorrect and constitutes no basis for the dismissal of any of the Shimadas' claims. First, the economic loss rule is not implicated in the absence of any contractual privity between the parties. See *Alejandre v. Bull*, 159 Wn.2d 674, 153 P.3d 864 (2007). Furthermore, it is well-established that the economic loss rule does not apply where defects cause physical injury or harm to other objects. *Stuart v. Coldwell Banker Commercial Group, Inc.*, 109 Wn.2d 406, 420, 745 P.2d 1284 (1987).

Quadrant does not, and cannot dispute that there is no contractual relationship between them and the Shimadas that could give rise to an economic loss argument. The economic loss rule is contract dependent. CP 508; 655; *Alejandre*, 159 Wn.2d at 682-83.

Moreover, the economic loss rule does not apply to the Shimadas' claims for their personal damages. The Shimadas have repeatedly detailed the personal injuries and health problems they have suffered as a result of Weyerhaeuser, WRECO and Quadrant's fraudulent and negligent acts and omissions. CP 3-26; 789. The record and the evidence on summary judgment amply establish that the Shimadas claim more than economic damages.

CP 3-26; 789. Quadrant's argument that the economic loss rule bars the Shimadas' claims is meritless.

F. Claim for Outrage.

The trial court's dismissal of the Shimadas' claim for outrage should be reversed because their claim is amply supported by the record. The question whether a given defendant's conduct is outrageous requires consideration of the defendant's knowledge given the circumstances and is typically a question for the trier of fact. *Jackson v. Peoples Fed. Credit Union*, 25 Wn. App. 81, 604 P.2d 1025 (1979); *Doe v. Corporation of President of Church of Jesus Christ of Latter-Day Saints*, 141 Wn. App. 407, 167 P.3d 1193 (2007) (affirming denial of motion for directed verdict on outrage claim).

Even without a fair opportunity to complete discovery, the record demonstrates that Weyerhaeuser, WRECO and Quadrant knew about widespread problems with mold and moisture contamination in its homes years before they marketed Quadrant to the Shimadas. CP 6-7; 9-14; 187-298; 772-74; 781-82; 868-1172. Weyerhaeuser, WRECO and Quadrant intentionally withheld from the Shimadas highly-pertinent information that resulted in chronic

sickness and injuries to their health and the health of their children. Quadrant concealed these facts even though the Shimadas specifically asked about them. Evidence that the Defendants knowingly and willfully concealed material information that led to sickness in babies, children and adults adequately supports the Shimadas' claim for outrage. This claim is not subject to dismissal on a motion for summary judgment.

G. The Trial Court Abused its Discretion When it Denied the Shimadas' CR 56(f) Motion.

Weyerhaeuser and WRECO moved for summary dismissal of the Shimadas' claims as a matter of law on the basis that the Shimadas do not have sufficient facts to support a "piercing of the corporate veil" theory of liability against them. CP 652-62. Any "corporate veil piercing" analysis would be erroneous given that the Shimadas asserted only direct liability claims against Weyerhaeuser and WRECO. CP 3-36; 673-81. Genuine issues of material fact exist regarding Weyerhaeuser and WRECO's direct liability<sup>10</sup> as a result of their acts and omissions. The record

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<sup>10</sup> A parent corporation may expose itself to direct liability for its own action (or inactions) in operating, managing and otherwise controlling the tortuous business acts or operations of its subsidiary. See *Minton v. Ralston Purina Co.*, 146 Wn.2d 385, 47 P.3d 556 (2002); *Taliesen Corp. v. Razore Land Co.*, 135 Wn. App. 106, 144 P.3d 1185 (2006). For example, a parent corporation may be liable for the torts committed by its wholly owned subsidiaries if

supports the Shimadas' claims based on Weyerhaeuser and WRECO's direct liability arising from their admitted ability to control Quadrant's activities and its long-standing knowledge (years before the Shimadas purchased a Quadrant home) of mold and moisture related problems in Quadrant homes. CP 11; 674-76; 707-714; 717-18; 729-30; 732-33; 738-39.

More importantly, the trial court abused its discretion when it denied the Shimadas' CR 56(f) motion without ruling on two previously-filed motions to compel discovery and where the moving defendants had not produced a single document in discovery.

CR 56(f) permits a trial court to continue a summary judgment motion when the party seeking a continuance offers a good reason for the delay in obtaining the discovery. CR 56(f); *Durand v. HMC Corp.*, 151 Wn. App. 818, 828, 214 P.3d 189 (2009). A court may deny a motion for a continuance only when (1) the requesting party does not offer a good reason for the delay in obtaining the desired evidence; (2) the requesting party does not state what evidence would be established through the additional discovery; or (3) the desired evidence will not raise a genuine issue of material fact. *Tellevik v. 31641 West Rutherford Street*, 126 Wn.2d 68, 90, 838 P.2d 111 (1992). This Court reviews a refusal to

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the parent corporation commits intentional fraud. *Minton*, 146 Wn.2d 385.

grant a continuance for abuse of discretion. *Id.* A trial court abuses its discretion when a ruling is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

In *Tellevik*, the plaintiffs moved for a CR 56(f) continuance of the defendant's summary judgment motion. *Tellevik*, 120 Wn.2d at 90. Plaintiffs established that they were deprived of information necessary to defeat the motion for summary judgment because the defendant did not respond to the plaintiffs' discovery requests. *Id.*, at 91. The Supreme Court held that the trial court abused its discretion in denying the request for a continuance where the plaintiffs had set forth the specific facts they hoped to obtain through further discovery that would defeat the summary judgment motion. *Id.*

The same analysis applies here. As the record reflects, the Shimadas immediately and diligently sought critical discovery regarding WRECO and Weyerhaeuser's knowledge of, and participation in, the investigation and remediation of water, mold, air quality, and other defects in Quadrant homes for nearly 15 months. CP 430-59; 461-74. The Shimadas served written discovery requests on WRECO and Weyerhaeuser at the inception of this case, which sought, among other things, documents relating to analyses, investigations of mold and air quality in Quadrant homes; internal correspondence regarding mold, air quality, and defects in

Quadrant homes; and all correspondence and communications with the third-party companies that Quadrant used to investigate or remediate these issues. CP 430-59; 461-74.

WRECO and Weyerhaeuser refused to produce any documents in response to these discovery requests and the Shimadas filed a motion to compel in August 2008. CP 358-60; 430-59. The trial court declined to rule on the motion to compel and asked the parties to try to resolve the discovery issue through additional discussion. CP 358. When the defendants again refused to produce any of the requested documents, the Shimadas filed a second motion to compel in July 2009. CP 461-474.

Because the trial court had not ruled on the second motion to compel by the time WRECO and Weyerhaeuser moved for summary judgment, the Shimadas filed a motion for a CR 56(f) continuance. CP 684-752.<sup>11</sup> That motion and its supporting materials specifically explained the evidence that was being sought and not provided and its relevance to the pending motions for summary judgment. CP 684-752. The CR 56(f) motion explained that the Shimadas were seeking discovery that was expected to confirm or establish that WRECO and Weyerhaeuser had

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<sup>11</sup> The trial court denied the Shimadas' CR 56(f) motion and never considered and/or disregarded the Shimadas' Second Motion to Compel at the September 4, 2009, summary judgment hearing. VRP 1-68.

knowledge of widespread problems in Quadrant homes, including defects, water, mold, and air contamination issues. CP 684-752. The Shimadas further explained that this evidence was also expected to establish that WRECO and Weyerhaeuser participated in and/or approved of Quadrant's practice of not informing potential homebuyers of the widespread problems and Quadrant's decision not to alter its 54-day construction process that had been implicated as the cause of the widespread defects in Quadrant homes. CP 684-752. The Shimadas offered far more than generalizations about what they expected the withheld evidence to show. They also offered, as the basis for the substantive response to WRECO and Weyerhaeuser's motions, the uncontroverted testimony of Weyerhaeuser and WRECO's president, in which he admitted that he (1) had control over Quadrant's operations; (2) was personally aware of mold and moisture related contamination within Quadrant homes; and (3) would investigate Quadrant's remediation practices to determine if there was a pattern of substandard construction practices when Quadrant constructs its homes. CP 674-75; 707-14. The Shimadas also presented the testimony of WRECO Vice-President Kevin Wilson, who confirmed his participation in WRECO's investigation into health problems caused by the issues discovered in Quadrant homes. CP 675; 717-18.

The trial court lacked a tenable basis to deny the Shimada's timely and supported CR 56(f) motion for a continuance. The

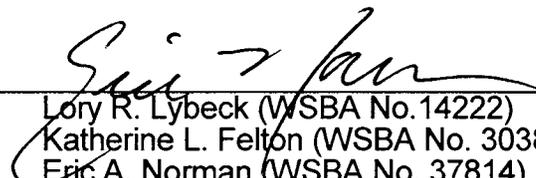
motion detailed Weyerhaeuser and WRECO's refusals to provide even a single document in discovery, the trial court's repeated failures to rule on the ensuing motions to compel and explained what evidence would be established through the basic discovery the Shimadas had been denied for 15 months. CP 684-752. In light of WRECO and Weyerhaeuser's motions for summary judgment, in which they claimed the Shimadas could not tie them to any of the acts or omissions of Quadrant, the trial court abused its discretion by refusing to allow the Shimadas any discovery into these critical issues.

#### IV. CONCLUSION

For all of the reasons set forth above, this Court should reverse the trial court's summary dismissal of the Shimadas' claims against Quadrant, Weyerhaeuser, and WRECO for violations of the consumer protection act (RCW 19.86), fraud, negligence, negligent misrepresentation and outrage and remand for trial.

Respectfully submitted this 5th day of February, 2010.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this date the undersigned caused copies of the documents identified below to be sent with messenger service to be served on February 5, 2010, as indicated on the following persons:

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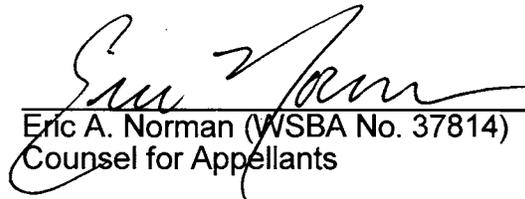
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED at Mercer Island, Washington, this 5<sup>th</sup> day of February, 2010.

  
Eric A. Norman (WSBA No. 37814)  
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