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COURT OF APPEALS DIV I
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No. 65945-6-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

DEBORAH RODRIGUEZ, Petitioner,

v.

AMERICA ONE FINANCE, INC., ET AL, Respondent

BRIEF OF PETITIONER

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05/16/11

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I. **PROCEDURAL HISTORY/STATEMENT OF THE CASE**

In the first half 2005 Plaintiff Deborah Rodriguez (hereafter Ms. Rodriguez) had been recovering from two prior hip replacement surgeries, which limited her ability to work at her normal level. Ms. Rodriguez had been self-employed in a beauty salon business for over 25 years. Due to a health condition Ms. Rodriguez fell behind on her mortgage payments for her home located at 4107 38th Avenue South, Seattle, WA 98118, legally described as follows:

Lot 3, Block 12, Squire's Lakeside Addition to the City of Seattle, According to the Plat, Thereof, Recorded in Volume 11 of Plats, Pages(s) 50, in King County, Washington.

Ms. Rodriguez initially purchased this property in November 2003.

Ms. Rodriguez initially became acquainted with Stewart Campbell (hereafter Mr. Campbell) through a church, which they both attended. Ms. Rodriguez had been advised that Mr. Campbell was in the mortgage business and was working to assist another church member with a mortgage issue, when Ms. Rodriguez was approached by Mr. Campbell. Mr. Campbell advised that he was aware of her financial situation and could assist her to resolve her loan delinquency and retain her home. Based upon her

understanding that Mr. Campbell was a real estate and mortgage professional and had expertise in this area, Ms. Rodriguez relied on Mr. Campbell's expertise to form a plan to remedy her delinquent loan status.

Mr. Campbell initially took a loan application from Ms. Rodriguez and performed a credit check with the intent of arranging for Ms. Rodriguez to refinance her home in order to obtain a lower interest rate and hence, a lower monthly payment. As this was Ms. Rodriguez primary goal.

After obtaining Ms. Rodriguez credit score Mr. Campbell advised Ms. Rodriguez that he could not directly refinance her property at that time, but that he had another method of assisting individuals in her situation. Mr. Campbell advised Ms. Rodriguez that he could help her by arranging for defendant Claire M. Blodgette (hereafter Ms. Blodgette) to purchase her property and hold said property in trust for Ms. Rodriguez. Mr. Campbell represented that Ms. Blodgette would use her credit and would hold said property for approximately six months, at which time the property would be transferred back to Ms. Rodriguez by Ms. Blodgette. Mr. Campbell explained that Ms. Blodgette would be in essence holding the property in trust for Ms. Rodriguez who would continue to live in her home and would continue to make the monthly mortgage payments. Mr. Campbell explained that for the use of her credit Ms. Blodgette would receive \$5,000.00 at the closing of the initial sale and that she would receive another \$5,000.00 when

the property was transferred back to Ms. Rodriguez. Mr. Campbell represented to Ms. Rodriguez that he could help her resolve her financial difficulties and that all she needed to do was to comply with his plan and follow his instructions.

Mr. Campbell also represented to Ms. Rodriguez that the sales price of \$248,000.00 for her home would be sufficient to produce proceeds sufficient to allow Ms. Rodriguez to pay off all her creditors and to provide her with approximately \$30,000.00 to assist with her expenses over the following six months. After that time, according to Mr. Campbell, Ms. Rodriguez's credit would be improved and she would then regain title to her property and, in essence, refinance her home for approximately \$248,000.00 and obtain a more favorable loan interest rate because of her improved credit score.

None of the above has occurred. Instead, Mr. Campbell and America One Finance, Inc. arranged a loan for Ms. Blodgette as follows: 1. First Mortgage \$212,000.00; 2. Second Mortgage \$53,000.00; 3. Funds Deposited from some source, \$5,393.20; 4. Seller paid costs \$7,950.00, for a total of \$278,460.31.

Campbell and America One Finance received Loan Origination Fees of \$8,200.00, Loan Application Fees of \$495.00 and a broker rebate from the lender in the amount of \$2,120.00. Additionally, Mr. Campbell embezzled and absconded with \$21,000.00, which was paid to a straw man entity by the

name of SDCORP1, LLC, of which he is the sole owner. Further, Ms. Blodgette has received a payment of at least \$5,000.00 for her involvement in this fraudulent scheme.

At the time of these transactions, Ms. Rodriguez was under financial stress and did not have a clear understanding of what was occurring, but she trusted Mr. Campbell because he was a fellow church member and she understood based upon his representations to her and statements by others that he was an expert in the mortgage business.

Further, all defendants knew or should have known that Ms. Rodriguez did not understand what was occurring in this transaction, and they knew as well that Mr. Campbell's proposed transaction was detrimental to Ms. Rodriguez and benefited no one but Mr. Campbell, America One Finance, Inc., and Ms. Blodgette.

Because of the pressurized manner of Mr. Campbell in handling these transactions, Ms. Rodriguez was not given an opportunity and did not read any documents, but instead relied on the representations of Mr. Campbell. At no time did Mr. Campbell advise Ms. Rodriguez that this transaction would deprive her of all of the equity in her home and that upon completion of this transaction that it would be almost impossible for her to ever regain ownership of her home.

The actions of America One Finance, Inc., Mr. Campbell and Ms. Blodgette fraudulently deprived Ms. Rodriguez of the equity she had accumulated in her home, solely to generate funds for these Defendants' own benefit.

At all times mentioned herein, Ms. Rodriguez, Mr. Campbell, and Ms. Blodgette, and each of them, were and now are residents of King County, Washington, and America One Finance, Inc., was and now is a Washington Corporation, doing business within the State of Washington, North American Specialty Insurance Company, was and now is a Delaware Corporation, doing business within the State of Washington. At all times mentioned herein, Mr. Campbell was and now is an owner, officer, employee or agent of America One Finance, Inc., and they, and each of them, were conducting business in King County, Washington within the meaning of RCW 4.12.025 and solicited members of the public, including Ms. Rodriguez, for mortgage and other business and transacted business, or had an office for the transaction of business within King County, Washington. At all material times herein, North American Specialty Insurance Company was conducting business in King County, Washington within the meaning of RCW 4.12.025 as it solicited insurance and other business and transacted business, or had an office for the transaction of business within King County, Washington.

II.

ISSUES

1. Whether Summary Judgment is proper where facts are in dispute and genuine issues of material fact exist.
2. Whether genuine issues of material fact exist as to whether or not the actions of the Defendant America One were fraudulent?
3. Whether genuine issues of material fact exist as to whether or not the actions of America One were unconscionable?
4. Whether genuine issues of material fact exist as to whether or not the actions of America One were in violation of the Washington Consumer Protection Act?
5. Whether genuine issues of material fact exist as to Plaintiffs Emotional Distress Claim?

III. ARGUMENT

1. STANDARD FOR DISMISSAL OF CLAIMS PURSUANT TO CR 56

The standard for dismissal of claims under CR 56 is set forth in the case of Urban v. Mid Century Insurance, 79 Wn.App. 798, (1995), in which the court stated,

“[1] On appeal of a summary judgment, we engage in the same inquiry as the trial court. *Nationwide Mut. Fire Ins. Co. v. Watson*, 120 Wn.2d 178, 186, 840 P.2d 851 (1992). Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). On review of a summary judgment, we consider the facts most favorably to the nonmoving party, and, after doing so, will affirm if reasonable minds could reach but one conclusion. *Nationwide Mut.*, 120 Wn.2d at 186.

The standard for dismissal as set forth above was not met in this matter.

The court could not as a matter of law rule that beyond a reasonable doubt there existed no facts, which would justify recovery on the part of the plaintiff.

STANDARD OF REVIEW

In an appeal of a courts order on motion for dismissal on Summary Judgment pursuant to CR 56, the review is de novo. Hence, the court will review the record and all evidence contained therein and construe the same in a light most favorable to the non-moving party.

2. THE DEFENDANT AMERICA ONE IS RESPONSIBLE FOR THE FRADULENT ACTIONS OF STEWART CAMPBELL/SDCORP1,LLC.

Stewart Campbell/SDCORP1, LLC contracted with America One Finance to serve as an Independent Loan Representative. (See Exhibit 2 to

Declaration of Autum Van Roy). This document reads in relevant part as follows:

“It is understood and agreed that the America One Finance, Inc. herein accepts responsibility, without limitation, for any and all violations of the Act committed by the Independent Contractor named herein.”

The agreement between America One Finance and Stewart Campbell is governed by RCW 19.146, which reads as follows:
RCW 19.146.0201

I. Loan originator, mortgage broker — Prohibitions — Requirements.

It is a violation of this chapter for a loan originator, mortgage broker required to be licensed under this chapter, or mortgage broker otherwise exempted from this chapter under RCW 19.146.020(1)(e), (g), or (4) to:

- (1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;
- (2) Engage in any unfair or deceptive practice toward any person;
- (3) Obtain property by fraud or misrepresentation;
- (4) Solicit or enter into a contract with a borrower that provides in substance that the mortgage broker may earn a fee or commission through the mortgage broker's "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;
- (5) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting from a person exempt from licensing under RCW 19.146.020(1)(g) or (h) or a lender with whom the mortgage broker maintains a written correspondent or loan broker agreement under RCW 19.146.040;
- (6) Fail to make disclosures to loan applicants and noninstitutional investors as required by RCW 19.146.030 and any other applicable state or federal law;
- (7) Make, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engage in bait and switch advertising;
- (8) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any reports filed by a mortgage broker or in connection

with any investigation conducted by the department;

(9) Make any payment, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(10) Advertise any rate of interest without conspicuously disclosing the annual percentage rate implied by such rate of interest;

(11) Fail to comply with any requirement of the truth-in-lending act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226; the real estate settlement procedures act, 12 U.S.C. Sec. 2601 and Regulation X, 24 C.F.R. Sec. 3500; the equal credit opportunity act, 15 U.S.C. Sec. 1691 and Regulation B, Sec. 202.9, 202.11, and 202.12; Title V, Subtitle A of the financial modernization act of 1999 (known as the "Gramm-Leach-Bliley act"), 12 U.S.C. Secs. 6801-6809; the federal trade commission's privacy rules, 16 C.F.R. Parts 313-314, mandated by the Gramm-Leach-Bliley act; the home mortgage disclosure act, 12 U.S.C. Sec. 2801 et seq. and Regulation C, home mortgage disclosure; the federal trade commission act, 12 C.F.R. Part 203, 15 U.S.C. Sec. 45(a); the telemarketing and consumer fraud and abuse act, 15 U.S.C. Secs. 6101 to 6108; and the federal trade commission telephone sales rule, 16 C.F.R. Part 310, as these acts existed on January 1, 2007, or such subsequent date as may be provided by the department by rule, in any advertising of residential mortgage loans, or any other applicable mortgage broker or loan originator activities covered by the acts. The department may adopt by rule requirements that mortgage brokers and loan originators comply with other applicable federal statutes and regulations in any advertising of residential mortgage loans, or any other mortgage broker or loan originator activity;

(12) Fail to pay third-party providers no later than thirty days after the recording of the loan closing documents or ninety days after completion of the third-party service, whichever comes first, unless otherwise agreed or unless the third-party service provider has been notified in writing that a bona fide dispute exists regarding the performance or quality of the third-party service;

(13) Collect, charge, attempt to collect or charge or use or propose any agreement purporting to collect or charge any fee prohibited by RCW 19.146.030 or 19.146.070;

(14)(a) Except when complying with (b) and (c) of this subsection, act as a loan originator in any transaction (i) in which the loan originator acts or has acted as a real estate broker or salesperson or (ii) in which another person doing business under the same licensed real estate broker acts or has acted as a real estate broker or salesperson;

(b) Prior to providing mortgage services to the borrower, a loan originator, in addition to other disclosures required by this chapter and other laws, shall provide to the borrower the following written disclosure:

THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO YOU. I AM ALSO A LOAN ORIGINATOR, AND WOULD LIKE TO PROVIDE MORTGAGE SERVICES TO YOU IN CONNECTION WITH YOUR LOAN TO PURCHASE THE PROPERTY.

YOU ARE NOT REQUIRED TO USE ME AS A LOAN ORIGINATOR IN CONNECTION WITH THIS TRANSACTION. YOU ARE FREE TO COMPARISON SHOP WITH OTHER MORTGAGE BROKERS AND LENDERS, AND TO SELECT ANY MORTGAGE BROKER OR LENDER OF YOUR CHOOSING; and

(c) A real estate broker or salesperson licensed under chapter 18.85 RCW who also acts as a mortgage broker shall carry on such mortgage broker business activities and shall maintain such person's mortgage broker business records separate and apart from the real estate broker activities conducted pursuant to chapter 18.85 RCW. Such activities shall be deemed separate and apart even if they are conducted at an office location with a common entrance and mailing address, so long as each business is clearly identified by a sign visible to the public, each business is physically separated within the office facility, and no deception of the public as to the separate identities of the broker business firms results. This subsection (14)(c) shall not require a real estate broker or salesperson licensed under chapter 18.85 RCW who also acts as a mortgage broker to maintain a physical separation within the office facility for the conduct of its real estate and mortgage broker activities where the director determines that maintaining such physical separation would constitute an undue financial hardship upon the mortgage broker and is unnecessary for the protection of the public; or

(15) Fail to comply with any provision of RCW 19.146.030 through 19.146.080 or any rule adopted under those sections.

[2006 c 19 § 4; 1997 c 106 § 3; 1994 c 33 § 6; 1993 c 468 § 4.]

It is clear in this matter that the actions of Stewart Campbell are attributed to America One Finance under the terms of their contract, as set forth above, as well as is required by the terms of RCW 19.146, the Mortgage Brokers Practice Act, as set forth above.

In this matter Stewart Campbell has violated at a minimum the following provisions of RCW 19.146.0201, which actions are attributable to America One Finance, and for which America One Finance has accepted responsibility:

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

In this matter it is clear that as set forth in the affidavit of Deborah Rodriguez that Stewart Campbell clearly employed a scheme or device to defraud or mislead borrowers or to defraud any person. Hence, it is clear from the statutory language that Ms. Rodriguez would not have been required to be a borrower in order for her to fall under the protection of this statutory provision. But, in this case she was a borrower under the statute based upon the fact that she initially approached Mr. Campbell in regards to refinancing her home and based upon the fact that to this end Mr. Campbell took a loan application from Ms. Rodriguez and obtained a credit report all in furtherance of procuring a refinance loan for Ms. Rodriguez.

Next, it is clear that Stewart Campbell engaged in an unfair and deceptive practice toward Ms. Rodriguez and finally, it is clear that by fraud or misrepresentation Mr. Campbell obtained property belonging to Ms. Rodriguez in the form of her real property and specifically in the form of cash which represented her equity in the above referenced real property. This is reflected not only by the loan costs and fees that were paid to Stewart Campbell and America One Finance and Blodgett, but also by the \$21,000.00 which was taken by Stewart Campbell, by being diverted to SDCORP1, LLC whom Ms. Rodriguez would later learn was an alter ego of Stewart Campbell as it was an entity of which he was the sole owner.

Defendant America One sets forth the elements of fraud under Washington law as follows: (1) a representation of an existing fact; (2) its materiality; (3) its falsity; (4) the speaker knowledge of its falsity or ignorance of its truth; (5) his intent that it should be acted on by the person to whom it

is made; (6) ignorance of its falsity on the part of the person to whom it is made; (7) the later reliance on the truth of the representation; (8) his right to rely upon it; and (9) his subsequent damage.

In this matter defendant represented to Ms. Rodriguez that he could save her family home and preserve the equity in said home for Ms. Rodriguez benefit by transferring the title to said home to Clare Blodgett to hold in trust for Ms. Rodriguez. The existing fact was the assertion that he could preserve Ms. Rodriguez property and obtain a more favorable payment for Ms. Rodriguez by transferring the same to Blodgett, and the actual act of arranging and consummating the transfer. This representation is clearly material, it was clearly false, Campbell knew it was false, he clearly intended Ms. Rodriguez to act on this representation, Ms. Rodriguez clearly relied on the truth of the representation, Ms. Rodriguez clearly had a right to rely on the representation as it was coming from an individual whom she believed was an expert in this area, and Ms. Rodriguez was clearly damaged as is evidenced by the loss of her home and the loss of all the equity which she had accumulated in her home.

Hence, as to the issue of whether Ms. Rodriguez is able to establish the nine elements of fraud, the answer is clearly yes. Further, the question as to the existence of fraud or whether all of the elements of fraud are present is generally a question of fact and is not appropriate for summary judgment. Duke v. Boyd, 133 Wn. 2d 80, 942 P.2d 351(1997).

Next, America One asserts that even if Ms. Rodriguez could establish fraud on the part of Mr. Campbell, her claim is still deficient because she

cannot demonstrate that any communication made by America One was false. Further, defendant goes on to assert that America One never became involved and no relationship was formed with America One because they never brokered a loan for Ms. Rodriguez. This assertion is false on at least two levels and its inclusion herein is further illustration of the defendant's bad faith actions in this matter. At page 52, line 17 of her deposition the following exchange occurred:

Q: When you first met up with Mr. Campbell, what was the discussion about and what were you initially seeking for him to do for you?

A: Initially I wanted him to refinance and give me a lower mortgage payment. That's all I wanted.

Q: As far as you know, did he take steps to do that?

A: As far as I know, he did.

Ms. Rodriguez clearly states that she initially went to Campbell seeking a refinance and that he took a loan application and pulled her credit. This in and of itself clearly established a borrower relationship under RCW 19.146. Further, under RCW 19.146 a borrower relationship is not even required, as a loan representative is prohibited from taking fraudulent or deceptive actions against any individual.

Further, America One's argues that it had no communication with Ms. Rodriguez. This is not a defense as under their contract with Stewart Campbell and under RCW 19.146 as set forth above America One Finance is

responsible for the actions of persons whom they contract with to provide loan originations services to the public.

A summary judgment motion should be granted only if from all the evidence, reasonable persons could reach but one conclusion. Where different inferences could be drawn from evidentiary facts as to ultimate facts such as intent, knowledge, good faith and negligence, summary judgment is not warranted. Johnson v. Schafer, 47 Wn.App 405, 735 P.2d 419 (1987).

Whether America One has violated the RCW 19.146.0201 is a question of fact for the finder of fact to determine.

In this matter the allegations as to said violations are herein unrebutted. Hence, the only reasonable conclusion that the court can come to in this matter is that the actions of America One violated provisions of RCW 19.146?

At a minimum based upon the above facts in this matter it is clear that different inferences can be drawn from the evidentiary facts submitted as to the ultimate issues in this matter concerning intent, knowledge, good faith and negligence. Hence, defendants Motion for Summary Judgment must be denied.

3. THE ACTIONS OF AMERICA ONE FINANCE WERE UNCONSONABLE.

In the present case the plaintiff has clear legal and equitable rights, which are being interfered with. The plaintiff was the owner of real property

located at 4107 38th Avenue South, Seattle, WA 98118. Said real property was transferred on or about July 19, 2005 from Ms. Rodriguez to Ms. Blodgett. It was at or about this time that Ms. Rodriguez was fraudulently induced to enter the unconscionable contract between herself and Blodgett, for which Stewart Campbell and America One Finance were the facilitators. Stewart Campbell set up, arranged, drafted documents and orchestrated the entire transaction in his role as a loan representative of America One Finance.

At the time of entering into this transaction the plaintiff had no idea that she would be deprived of her real property and the equity which she had accumulated therein. But, the defendant Stewart Campbell was fully aware that the fraudulent equity-skimming scheme, which he had set up in, this matter was doomed to fail. He know full well that in six months, Ms. Rodriguez would not be in a position to refinance her property.

As illustrated by the case law as set forth herein the contract between the Rodriguez, Blodgett, Campbell and America One Finance, is clearly an unconscionable contract. Further, any assertions by America One that they had no knowledge of the actions of Campbell or SDCORP1, LLC are without merit. Consider the Settlement Statement submitted as Exhibit 3 to the Affidavit of Gaukroger, clearly sets forth the amount of \$21,000.00 being paid to SDCORP1, LLC, any even cursory review of the settlement statement would have raised a red flag on the part of the mortgage broker, where it's loan representative is not only receiving his normal fees, but is also receiving funds in the amount of \$21,000.00.

In, Zuver v. Airtouch Communications, 153 Wn.2d 293, at 302-308, ___ P.2d. ___ (2004) discusses unconscionable contracts. Washington recognizes two categories of unconscionability, substantive and procedural, citing Nelson v. McGoldrick, 127 Wn.2d 124, 131, 896 P.2d 1258 (1995), and Schroeder v. Fageol Motors, Inc., 186 Wn.2d 256, 260, 544 P.2d 20 (1975). Substantive unconscionability involves those cases where a clause or term in the contract is alleged to be one-sided or overly harsh. Schroeder, 86 Wn.2d at 260.

Our present case meets the criteria for substantive unconscionability. In this matter Stewart Campbell induced Ms. Rodriguez to enter into an agreement and a refinance scheme, which he knew at the time, had no chance of coming to fruition. In this transaction, Stewart Campbell, America One Finance and Clare Blodgett all received funds from the equity of Ms. Rodriguez home. Over \$50,000.00 of Ms. Rodriguez equity was disbursed in this transaction with her receiving approximately \$8,000.00 or approximately 15%. On its face such a transaction is unconscionable. Especially, when viewed from the perspective that there was no true purpose for this transaction other than to skim the equity from the plaintiffs property for the benefit of the defendants.

“Shocking to the conscience”, “monstrously harsh”, and “exceedingly calloused” are terms sometimes used to define substantive unconscionability. Zuver, supra, at page 303, citing Nelson, supra, at page 131, which is a quote from Montgomery Ward & Co. v. Annuity Bd. of S. Baptist Convention, 16 Wn.App. 439, 444, 556 P.2d 552 (1976).

Procedural unconscionability is the lack of meaningful choice, considering all the circumstances surrounding the transaction including “the manner in which the contract was entered,” whether each party had “a reasonable opportunity to understand the terms of the contract,” and whether “the important items [were] hidden in a maze of fine print.” Nelson, *supra*, page 131, citing several cases. Here, it is clear that Ms. Rodriguez did not have a reasonable opportunity to understand the terms of the transaction. In fact she was misled by the misrepresentations of Mr. Campbell to enter into this agreement on the belief that according to Mr. Campbell her property was merely being held in trust and would be returned to her in six months, when she would be able to refinance her property at a lower interest rate and a lower payment amount.

By implication (doing the math), it is apparent that every other party to this matter profited except for Ms. Rodriguez. At page 304-305, the Zuver case also discusses contracts of adhesion, which is determined by looking at 3 factors: (1) whether the contract is a standard form printed contract, (2) whether it was prepared by one party and submitted to the other on a “take it or leave it” basis, and (3) whether there was “no true equality of bargaining power” between the parties. (citing several cases) In our case, all 3 of these questions are answered in the affirmative. In Zuver, the key issue was the enforceability of an arbitration clause in contract.

Here, the key issue is even more important, it determines whether Ms. Rodriguez is allowed to keep the full amount of the equity in her home, or

whether the defendants should be allowed to abscond with said equity through deceit and misrepresentations.

Unconscionability is also discussed in 25 Wash. Practice, Chap. 9. It makes the following key points:

“Unconscionability is a doctrine under which courts may deny enforcement of all or part of an unfair or oppressive contract based on abuses during the process of forming a contract, or abuses within the actual terms of the contract itself.”

It goes on to a detailed discussion of factors, citing particular cases. I believe the facts of our case fit well into these legal principles, and require the protections as set forth by this doctrine.

**4. THE ACTIONS OF AMERICA ONE FINANCE
CONSTITUTE PER SE VIOLATIONS OF THE WASHINGTON
CONSUMER PROTECTION ACT.**

The defendant America One Finance asserts that in order to establish the first element of a CPA claim, Plaintiff must prove that America One failed to disclose material facts of which they had actual knowledge. This is incorrect. A violation of RCW 19.146 is a Per Se “unfair or deceptive act or practice in violation of RCW 19.86.020. State v. WWJ Corp, 138 Wn.2d 595(1999). Also, see, Fid. Mortgage Corp. v. Seattle Times Co., 131 Wn.2d 462(2005).

In this matter the actions of the defendants which ere in violation of RCW 19.146 constitute a per se violation of the Washington Consumer Protection Act. The elements of a per se violation of the Consumer Protection Act are set forth as follows:

[7] Consumer Protection - Action for Damages - Violation of Statute - Elements. The elements of a per se violation of the Consumer Protection Act (chapter 19.86 RCW) are (1) the existence of a pertinent statute, (2) violation of the statute, (3) damages proximately caused by the violation, and (4) membership in the class of persons protected by the statute. (See Fid. Mortgage Corp. above)

In this matter all of the elements are met. (1) The pertinent statute is RCW 19.146, (2) as set forth herein the actions of Stewart Campbell/America One Finance, clearly violated RCW 19.146.0201, (3) Ms. Rodriguez has lost her home and the equity in said home, hence, the damages are clear, (4) Ms. Rodriguez is clearly has membership in the class of persons protected by the statute.

See 19.146.0201:

- (1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;

At a minimum in this matter it has been established that genuine issues of material fact exist as to whether the defendant America One Finance through its Loan Representative Stewart Campbell took actions which violated RCW 19.146.0201 (1)(2) and (3). Pursuant to RCW 19.146 violations of said statute constitutes a per se violation of the Washington Consumer Protection Act.

In, Hangman Ridge Training Stables, Inc. v. Safeco Title Ins., 105 Wn.2d 778, 719 P.2d 531(1986), the court set forth the five element test for private causes of action under the Consumer Protection Act as follows:

The five elements of a private Consumer Protection Act action include: (1) an unfair or deceptive act or practice; (2) in the conduct of trade or commerce; (3) which impacts the public interest; (4) injury to the plaintiffs in their business or property; and (5) a causal link between the unfair or deceptive act and the injury suffered. «12»

Hangman Ridge is not the appropriate standard in this matter, as this matter involves a per se violation of the Consumer Protection Act, hence, analysis under Hangman's Ridge is not appropriate.

5. PLAINTIFFS EMOTIONAL DISTRESS CLAIMS ARE SUPPORTED BY EVIDENCE SUBMITTED HEREIN.

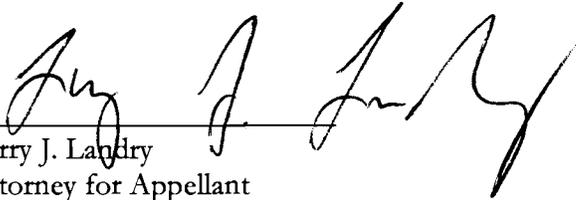
The basis for Ms. Rodriguez's claims for emotional distress as related to the conduct of America One Finance is set forth in Sections #2,3 and 4 above, and as set forth in Ms. Rodriguez's affidavit submitted herewith.

IV. CONCLUSION

Based upon the foregoing law, it is the Plaintiffs position that genuine issue of material fact exist as to whether the actions of Defendant America One were fraudulent, unconscionable and in violation of the Consumer Protection Act, hence precluding a finding on Summary Judgment as a matter of law that America One Finance does not have responsibility and liability for the above actions taken on its behalf against Ms. Rodriguez.

Hence, the Order of Dismissal entered by the Superior Court on June 13, 2008 should be reversed and this matter should be remanded to the Superior Court for trial.

DATED this 25th day of November 2011.



Larry J. Landry
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WSBA #16792