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NO. 72801-6-I

COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON

MICHAN RHODES and KEYSTONE WINDOWS AND
DOORS, INC.,

Appellants/Cross-Respondents.

v.

EMILY SHARP RAINS and MICHAEL RAINS and
RAINS LAW GROUP,

Respondents/Cross-Appellants,

BRIEF OF APPELLANTS RHODES/KEYSTONE

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STATE OF WASHINGTON
COURT OF APPEALS
DIVISION ONE
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I. ASSIGNMENT OF ERROR AND ISSUES

A. Assignment of Error

1. The trial court erred in dismissing plaintiffs' Consumer Protection Act ("CPA") claim on summary judgment before trial.

B. Issues Pertaining to Assignments of Error

1. Did the plaintiffs establish the five *prima facie* elements of their CPA claim as set forth in *Hangman Ridge*, i.e., (1) an unfair or deceptive act or practice; (2) the act or practice complained of occurred in the conduct of trade or commerce; (3) a showing of public interest; (4) plaintiff was injured in her "business or property"; and (5) a causal link exists between the unfair or deceptive act and the injury suffered by plaintiff? (Assignment 1.)

2. Did the Rains defendants fail to meet their burden of showing an absence of any disputed issue of material fact so as to require the granting of summary judgment? (Assignment 1.)

II. STATEMENT OF THE CASE

Appellant Michan Rhodes was 14 years old when her parents divorced (CP 225). She dropped out of high school and became independent, working at various jobs in the food industry, waitressing, painting, planting trees and selling produce (CP 225). She eventually found a niche selling windows for various window companies, and was

successful (CP 225). After some nine years of working as a sales representative for several window companies, she decided to open her own company, Keystone Home Construction (“Keystone”), which later became Keystone Windows and Doors, Inc., selling windows initially out of her home (CP 225).

Keystone was successful, and eight years later in 2005, Keystone leased a building in downtown Seattle on First Avenue South (CP 225). The building had a showroom and samples of windows, doors and other products Keystone sold (CP 225).

After Keystone leased its own space, Ms. Rhodes hired accountants and bookkeepers to manage financial matters (CP 225). Todd Sanders performed those duties from 2005 to 2010, and also acted as company controller (CP 225). Following his resignation in 2010, Keystone had a difficult time finding a replacement accountant and began to have problems due to neglect of its financial accounting (CP 225). For example, Keystone had a current account between June, 2009, and May, 2010, with its largest window supplier, Milgard (*id.*). By July of 2010, with no one really at Keystone’s financial controls, Keystone began to slide into debt with Milgard (*id.*).

In June, 2011, the Keystone accountant at that time was not controlling cash flows nor giving Ms. Rhodes accurate reports (CP

225). The accountant told Ms. Rhodes that there was a very serious problem and Ms. Rhodes needed to get help (CP 225). So Ms. Rhodes went to the Small Business Administration (“SBA”) to seek assistance (CP 225). At the SBA Ms. Rhodes was referred to Emily Rains (CP 225). The two first met on June 20, 2011 (CP 226).

At the meeting Ms. Rains explained that she was an attorney, was the owner of Rains Strategic Accounting firm (“RSA”), had over 1500 clients, helped people like Ms. Rhodes all the time, and could help Ms. Rhodes with “any issues” (CP 226). Ms. Rains was very convincing and was able to persuade Ms. Rhodes to give the latter a \$15,000 retainer check dated July 1, 2011, for help in the financial management of the company (CP 227). Ms. Rains sent Ms. Rhodes a fee agreement, addressed only to Ms. Rhodes and not mentioning Keystone at all (CP 227, ¶8). Ms. Rhodes believed that Ms. Rains was acting in the best interest of Ms. Rhodes and would be helping Ms. Rhodes with legal matters, including corporate matters (CP 226, ¶ 6; CP 227, ¶ 8).

On June 28, 2011, the Department of Revenue withdrew \$65,310.37 from Keystone’s bank account for back taxes (CP 227, ¶ 11). Ms. Rhodes had not had any significant tax problem before this time, and believed strongly in timely paying taxes owed (*id.*) The

\$65,301.37 withdrawal satisfied the amount due, but left Keystone with little funds with which to operate (*id.*). Ms. Rhodes spoke to Ms. Rains about the situation and asked her what Ms. Rhodes should do (*id.*). A sale of the company was discussed and Ms. Rains advised Ms. Rhodes about the potential sale (*id.*).

After reviewing Keystone's financials, which revealed Ms. Rhodes's strong ability to produce sales, Ms. Rains told Ms. Rhodes that Ms. Rhodes could rebuild Keystone, and asked Ms. Rhodes if Ms. Rhodes had any personal funds to contribute to get Keystone back on its feet (CP 228, ¶ 12) Ms. Rhodes revealed that she had \$65,000 in savings, and Ms. Rains advised Ms. Rhodes to contribute those funds to Keystone, which Ms. Rhodes did, relying on such personal business and legal advice (*id.*)

What followed was a sequence of events initiated and orchestrated by Ms. Rains that led to the ultimate demise of Ms. Rhodes's self-made company (CP 228-237; CP 570, ¶ 15). On the heels of Ms. Rhodes's capital infusion of personal funds, which was in early July, 2011, Ms. Rains devised a scheme whereby she would be employed by Keystone with the purported purpose to organize the accounting and address any legal issues that Keystone had (CP 228, ¶ 13). Her scheme included paying herself \$2,500 every two-week pay

period (*id.*). This is actually more than Ms. Rhodes was drawing from the company (*id.*). The checks were written to Emily Sharp Rains (*id.*).

The scheme also included Keystone's hiring Ms. Rains's husband, Michael Rains, to do information technology (computer) work (CP 228, ¶ 14). Ms. Rhodes thought it was a conflict of interest and objected, but Ms. Rains severed the connection with Kyle Crommett who could have done such work (*id.*) With no other ready alternative available, Ms. Rhodes reluctantly agreed to hire Michael Rains (*id.*). Once Michael took control of IT at Keystone, Ms. Rhodes could never access Keystone's accounting system by herself, without going through Michael (*id.*).

On July 7, 2011, Ms. Rains accompanied Ms. Rhodes to Key Bank where Ms. Rhodes deposited Ms. Rhodes's personal contributions to Keystone's account (CP 229, ¶ 15).¹ Ms. Rains insisted on having signing authority on Keystone's accounts (CP 229, ¶ 15). Ms. Rhodes objected that it was unnecessary, but Ms. Rains insisted in her very convincing manner, so Ms. Rhodes trusted her and went along with the suggestion (*id.*). Ms. Rhodes, however, refused to

¹The incident at Key Bank may well have occurred in December, 2011, instead of in July, 2011, but the exact month is immaterial to the issues raised on appeal.

have Michael as a signer on the account (*id.*)

Ms. Rhodes thought that everything was going to get cleared up in her accounting department with Ms. Rains on board, and Ms. Rhodes moved forward full steam to make sales, going out and selling as much as she could (CP 229, ¶ 16). She believed Ms. Rains's role was to take care of accounting and legal matters for the company, and Ms. Rhodes would handle sales (*id.*).

In October, 2011, Ms. Rains and Michael invited Tony Davis, Ms. Rhodes's boyfriend, and Ms. Rhodes to the Rains's rental home in Magnolia to talk about a remodel of it (CP 230, ¶ 21). Tony undertook the remodel and Ms. Rains came to Ms. Rhodes at Keystone on February 8, 2012, and made a big show of writing a check on Ms. Rains's personal account for \$8,000 for windows she was ordering from Milgard through Keystone for the remodel (CP 231). Ms. Rhodes believed that Ms. Rains would pay in the same way for any other products she ordered through Keystone, as Ms. Rains and Ms. Rhodes never had any discussion about providing "free" products, which Keystone would have to pay the vendor for, in any event (*id.*). It was Ms. Rains's job as CFO to create invoices and to do the accounting, and Ms. Rhodes left it to Ms. Rains in good faith to take care of paying for products Ms. Rains ordered from Keystone (*id.*). As Ms. Rhodes

found out later, after Ms. Rains left the company, Ms. Rains never paid for any other items except for that one \$8000 check (CP 231, 272). All the items she did not pay for added up to approximately \$31,500, and she owed Keystone that amount, which she never paid (CP 231, 273).

In mid-December, 2011, Ms. Rhodes discovered that Ms. Rains had ordered business cards (CP 231, ¶ 22). The proofs were emailed to Ms. Rhodes, and she saw Ms. Rains's titles printed as "CFO" and "General Counsel" (*id.*). Ms. Rhodes did not disapprove of the titles initiated and selected by Ms. Rains (*id.*).

Despite all of the warning signs, Ms. Rhodes held out hope that everything was going to get cleared up in her accounting department with Ms. Rains on board, and Ms. Rhodes moved forward full steam to make sales, going out and producing high sales (CP 229, ¶ 16).

In August, 2012 Ms. Rhodes discovered many e-mails from the bank, both current and old ones, addressed to Ms Rains and notifying her that Keystone was not doing very well financially and that Keystone's bank account was being overdrawn (CP 232, ¶ 25). Ms. Rains had always told Ms. Rhodes that the company was doing great and that there was no problems (*id.*). Ms. Rains never informed Ms. Rhodes of any financial problem Keystone had (*id.*).

Ms. Rains never gave Ms. Rhodes any financial reports about

the company, despite Ms. Rhodes's frequent requests for them (CP 232, ¶ 26). Ms. Rains would say that Keystone's accounting records were too messed up to provide the reports, even after Ms. Rains had been CFO for over a year (*id.*).

In June, 2012, Ms. Rains increased her salary to over \$10,000 per month, and increased Ms. Rhodes's draw at the same time (CP 233, ¶ 27). Ms. Rains assured Ms. Rhodes that the company could afford such a salary (*id.*).

In September, 2012, following months of frustration of not getting any financial reports, Ms. Rhodes told Ms. Rains that Ms. Rhodes was bringing someone from the outside to look at the accounting records (CP 233, ¶ 28). Ms. Rains resigned the next month (*id.*).

When Ms. Rains abruptly resigned on October 17, 2012, Ms. Rhodes was left with an accounting nightmare (CP 234, ¶ 33). She used her personal Keybank Visa card to make a payment to Milgard of \$19,785.41 on Keystone's behalf (*id.*). She did not draw a salary from Keystone after this time (*id.*).

In November, 2012, Keystone contracted with other people to clean up Keystone's books, and paid a lot less money than what Ms. Rains and her husband, sister and affiliate organizations were

charging (CP 234-35). The Rains defendants charged Keystone over \$200,000 during the fifteen months they were in financial control of Keystone (CP 300-301).

After Ms. Rains left, her accounting incompetence was made manifest (CP 235). Taxes were not timely paid, causing Keystone to pay penalties and interest (*id.*). There were thousands of dollars in bank overdraft fees (CP 300, ¶ 14). Accounting records were very poorly maintained (CP 295-96). There was also Ms. Rains's own unpaid balance for windows that she purchased from Keystone but never paid for; all the items she did not pay for added up to approximately \$31,500 (CP 231, 273).

Also after Ms. Rains departure, Ms. Rhodes discovered some documents in the company files which reveal more of what Ms. Rains's ultimate scheme was (CP 236, ¶ 41). Ms. Rains had made herself the treasurer of Keystone—a corporate officer—without any authority (*id.*). She stated that she was a co-owner of Keystone, again without the agreement of Ms. Rhodes (*id.*).² It is not unreasonable to conclude

²It also came to light that a Keystone employee had made a presentation to a potential client in April, 2012, and requested Ms. Rains's presence to address financing options for the client. During the presentation, Ms. Rains stated that she was both Chief Financial Officer of Keystone and its corporate attorney (CP 373). In addition, Ms. Rains also clearly stated that she was half owner of Keystone as equal partner with Ms. Rhodes (*id.*).

that Ms. Rains was trying to take over Keystone, or at least position herself to withdraw funds from the company with impunity.

Ms. Rhodes closed Keystone in April, 2013 (CP 236, ¶ 39). Ms. Rains left it in such bad shape financially, unbeknownst to Ms. Rhodes at the time, and Ms. Rhodes was in such a bad emotional state from Ms. Rains's deceptive conduct, that Ms. Rhodes closed the business that she had successfully developed over the years (CP 236, ¶ 39).

Finally, neither Ms. Rhodes nor Keystone ever received an invoice for the \$15,000 retainer paid to Ms. Rains on Keystone's account, until after the present lawsuit was filed (CP 233, ¶ 29). Ms. Rhodes asserts that the invoice contains hours billed for work which was not done, and is essentially a bogus invoice (CP 233-34). This includes Ms. Rains's billing for a five-hour conference call and billing for being on site with Ms. Rhodes for nine hours when Ms. Rhodes was not at the office all that day (CP 234). Ms. Rhodes was shocked when she finally saw the invoice, which was during discovery after the present lawsuit was filed (CP 233, ¶ 30).

Keystone and Ms. Rhodes filed the present lawsuit against Ms. Rains, Michael Rains and RSA alleging theories of legal malpractice, breach of fiduciary duty and violation of the Washington Consumer Protection Act (CP 1-13). The Rains defendants moved for summary

judgment on those claims, and at a hearing on March 14, 2014, the trial court denied the motion in its entirety (CP 48-50).

Shortly before trial, the Rains defendants again moved for summary judgment before a different judge, submitting essentially the same evidence, with respect to the legal malpractice, breach-of-fiduciary-duty and CPA claims (CP 125-155). This time at a hearing on July 25, 2014, the trial court granted the motion in part, dismissing the legal malpractice claim and the CPA claim, and reserving the breach of fiduciary claim for trial (CP 703). Ms. Rhodes timely filed a motion for reconsideration regarding the court's dismissal of the CPA claim (CP 708-721), and the trial court denied that motion (CP 705). The case was tried to a 12-person jury on plaintiffs' claim for breach of fiduciary duty and Ms. Rains's counterclaim for unpaid wages and third-party claim against Ms. Rhodes's boyfriend, Tony Davis, for construction defects relating to work he did on Ms. Rains's house (CP 772-775).

Following a four-day trial, the jury returned a verdict in favor of Ms. Rhodes in the amount of \$88,674.38 on the breach-of-fiduciary duty claim (CP 773). After reducing that amount by various offsets, the trial court entered a judgment in favor of Ms. Rhodes against Ms. Rains and her husband in the amount of \$39,087.48, plus statutory

attorney's fees and costs (CP 777).

Ms. Rains filed a flurry of post trial motions attacking the jury's decision, all of which were denied (CP 784). Keystone and Ms. Rhodes timely filed the instant appeal. Ms. Rains then filed a notice of appeal regarding the jury verdict. Both appeals were consolidated into the present appeal.

II. SUMMARY OF ARGUMENT

Ms. Rhodes's claims against the Rains defendants satisfy the five required *prima facie* elements of a CPA case. Ms. Rains, an attorney with an LLM in taxation, committed unfair and deceptive acts by representing orally and on various web postings the high quality of the accounting and financial services she would provide to small businesses, but in fact she delivered substandard and shoddy financial and accounting work.

Ms. Rains's real motive, however, was to worm her way into the management of the small business, extract financial benefit from an unsophisticated owner like Ms. Rhodes, hire Ms. Rains's husband and Ms. Rains's sister to do work for which they were not qualified, and then either establish a fictitious ownership interest in the company, and extract monetary payments from the company in the form of unjustified salary or products, or both. This conduct was clearly unfair

or deceptive, or both.

In addition, Ms. Rains failed to send any bill accounting for the \$15,000 retainer she received from Ms. Rhodes, and padded Ms. Rains's time to make the bill exceed \$15,000 (although she never sent a subsequent bill for the excess). The padded time billed at \$415 per hour included a phantom five-hour conference call about which Ms. Rains does not recall any details and a 9.25-hour on-site meeting with Ms. Rhodes on a day in which Ms. Rhodes was not even in the office most of the day.

Ms. Rains's activities occurred in the context of her holding herself out as an attorney and a person selling her sophisticated services in accounting and financial management. These activities were thus in the conduct of trade or commerce.

The public interest was affected because other small business owners were also subject to the same treatment. Ms. Rains's conduct certainly had the *capacity* to deceive or injure other small business owners.

Ms. Rhodes was damaged by Ms. Rains's conduct, because Ms. Rhodes was deprived of the ability to manage her small business due to the fact that Ms. Rains never provided any financial reports or other financial expertise as promised, and in essence had to close her

company because of Ms. Rains's conduct. Ms. Rhodes also paid an excessive legal invoice.

Ultimately, Ms. Rhodes went to trial on her remaining breach-of-fiduciary-duty claim against Ms. Rains, and obtained a jury verdict of \$88,674.38 in her favor on that claim. Ms. Rhodes should have been able to go to trial on her CPA claim as well, which involved essentially the same underlying conduct as alleged in the breach-of-fiduciary-duty claim. Ms. Rhodes would have been in a position to recover treble damages and attorney's fees for virtually the same conduct that gave rise to her breach-of-fiduciary-duty claim. The trial court erred in granting the Rains defendants' motion for summary judgment dismissing Ms. Rhodes's CPA claim.

III. LEGAL ARGUMENT

A. This Court Reviews the Trial Court's Summary Judgment Order De Novo.

A moving defendant meets its initial burden on summary judgment by showing that there is an absence of evidence to support the plaintiff's case. *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225 n. 1, 770 P.2d 182 (1989). The inquiry then shifts to the plaintiff to set forth specific facts demonstrating a genuine issue for trial. *Young*, 112 Wn.2d at 225. An order granting summary judgment should be affirmed if no genuine issue of material fact remains and the

moving party is entitled to judgment as a matter of law. CR 56(c). A material fact is one on which the outcome of the litigation depends. *Greater Harbor 2000 v. City of Seattle*, 132 Wn.2d 267, 279, 937 P.2d 1082 (1997).

The moving party bears the burden of showing that there is no genuine issue of material fact. *Atherton Condo. Apartment Owners Ass'n Bd. of Dirs. v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P. 2d 250 (1990). If the moving party does not sustain its burden, summary judgment should not be granted, regardless of whether the nonmoving party has submitted affidavits or other evidence in opposition to the motion. *Hash v. Children's Orthopedic Hospital*, 110 Wn.2d 912, 915, 757 P.2d 507 (1988).

Appellate courts review a summary judgment order de novo and consider the evidence and all reasonable inferences therefrom in the light most favorable to the nonmoving party. *Schaaf v. Highfield*, 127 Wn.2d 17, 21, 896 P.2d 665 (1995). This Court reviews the trial court's ruling on the record before the trial court at the time of the summary judgment motion. *Folsom v. Burger King*, 135 Wn.2d 658, 663, 958 P.2d 301 (1998); RAP 9.12; *Wash. Fed'n of State Emps. Council 28 v. Office of Fin. Mgmt.*, 121 Wn.2d 152, 163, 849 P.2d 1201 (1993).

Furthermore, issues of law are reviewed on appeal de novo. *Wingert v. Yellow Freight Systems, Inc*, 146 Wn.2d 841, 847, 50 P.3d 256 (2002). Issues of statutory interpretation are also reviewed de novo. *Hartson Partnership v. Goodwin*, 99 Wn. App. 227, 231, 991 P.2d 1211 (2000).

B. Plaintiffs Established a Prima Facie Case of Violation of the Washington Consumer Protection Act.

The Consumer Protection Act declares unlawful unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce. RCW 19.86.020. The elements of a violation of the Consumer Protection Act were set forth in *Hangman Ridge Training Stables, Inc. v. Safeco Title*, 105 Wn.2d 778, 785-793, 719 P.2d 531 (1986) as follows: (1) an unfair or deceptive act or practice; (2) the act or practice complained of occurred in the conduct of trade or commerce; (3) a showing of public interest; (4) plaintiff is injured in her "business or property"; and (5) a causal link is required between the unfair or deceptive act and the injury suffered by plaintiff. *Id.* The CPA is to be liberally construed. RCW 19.86.920.

Ms. Rhodes presented compelling *prima facie* evidence that all five elements of her CPA claim were satisfied. It was thus error for the trial court to grant the Rains's motion for summary judgment dismissing plaintiffs' CPA claim.

C. The Rains Defendants Committed Unfair or Deceptive Acts or Practices.

To meet the "unfair or deceptive act or practice" element, a plaintiff "need not show that the act in question was *intended* to deceive, but that the alleged act had the *capacity* to deceive a substantial portion of the public" [italics added]. *Hangman Ridge, supra*, 105 Wn.2d at 785; *Behnke v. Ahrens*, 172 Wn. App. 281, 290, 294 P.3d 729 (2012) (even the relatively few "rich" people comprise a substantial portion of the public).

More recently, the Washington Supreme Court in *Klem v. Washington Mutual Bank*, 176 Wn.2d 771, 782, 295 P.3d 1179 (2013) held that "a claim under the Washington CPA may be predicated upon a per se violation of statute, an act or practice that has the capacity to deceive substantial portions of the public, or *an unfair or deceptive act or practice not regulated by statute but in violation of public interest* [italics added]."³

³The court in *Klem* noted that an act or practice can be unfair without being deceptive, and the CPA itself declares "unfair acts or deceptive acts or practices" are sufficient to satisfy the acts or practices prong of a CPA action. The "or" between "unfair" and "deceptive" is disjunctive. Washington's CPA is modeled after federal consumer protection laws and incorporates many of the provisions of the federal acts. *Panag v. Farmers Ins. Co. of Wash.*, 166 Wn.2d 27, 48, 204 P.3d 885 (2009); *Hangman Ridge*, 105 Wn.2d at 783. The legislature declared the CPA was intended "to complement the body of federal law governing restraints of trade, unfair competition and unfair, deceptive, and fraudulent acts or practices in order to protect the public and

It clearly violates the public interest to conduct an operation that preys on vulnerable businesses, particularly small businesses, which arguably are the lifeblood of our economy. The Rains defendants' unfair or deceptive acts or practices also certainly had the capacity to deceive financially vulnerable businesses who sought accounting and financial advice. A short list of the unfair or deceptive acts committed by the Rains defendants includes the following:

1. **Falsely Promising Expert Financial Services.** Ms. Rains falsely promised expert financial services, but delivered grossly deficient financial services provided by inexperienced people. Ms. Rains's company, Rains Strategic Accounting ("RSA"), states that it

employs bookkeepers, accountants, reporting analysts, CPA's, tax attorneys and a network of respected CFO's to provide business operators comprehensive support. By using RSA, clients receive the benefits of employing skilled financial and accounting employees without incurring the high costs associated with employing these experts full-time.

foster fair and honest competition." RCW 19.86.920. The Washington legislature instructed courts to be guided by federal law in the area. *Id.* Although the supreme court has been guided by federal interpretations, Washington has developed its own jurisprudence regarding application of Washington's CPA. Current federal law suggests a "practice is unfair [if it] causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits." 15 U.S.C. § 45(n). *Klem v. Washington Mutual Bank*, 176 Wn.2d 771, 787.

(CP 238). RSA had no such employees (CP 337; CP 227, ¶ 10). Ms. Rains's sister, Heather, who was hired to do Keystone's accounting, was a cosmetologist with no experience in accounting (CP 296).

Ms. Rains's web advertising states that she "holds a J.D. and an LL.M in taxation" and is "licensed in a number of states across the country" (CP 241). It further promotes her "strong financial accounting background" and "significant experience in finance and expertise in tax and corporate law" (*id.*). These advertisements, upon which Ms. Rhodes relied (CP 226, ¶ 7), were further supported by Ms. Rains's verbal statements about Ms. Rains's expertise and that of her company (CP 226).

Yet as self-appointed chief financial officer and general counsel of Keystone, Ms. Rains failed to deliver on those promises. She failed to timely renew Keystone's automobile insurance policies (CP 235, ¶ 37); she failed to file business property tax forms for three years (CP 235, ¶ 38); she failed to provide any financial reports whatsoever (CP 232, ¶ 26; CP233, ¶ 28; CP 373, ¶ 4); she failed to tell Ms. Rhodes the true financial condition of Keystone (CP 233, ¶ 27); she incurred over \$2,000 in bank overdraft fees by writing checks with insufficient funds (CP 300); she failed to timely deposit checks (CP 301); she failed to reconcile bank accounts (CP 340); she failed to post deposits (CP 340);

she wrote checks without entering them in the accounting system (CP 340); she failed to timely pay employee payroll taxes (CP 340); she failed to produce cash flow projections, aging of accounts receivable, income statements, profit and loss statements, reports of accounts payable or balance sheets--all reports very useful in the financial management of a small business like Keystone (CP 341); she hired her sister to do Keystone's accounting work, when her sister had no experience in accounting (CP 296, ¶ 6); she failed to pay the majority of vendors' bills on time (CP 299, ¶13); she allowed gas credit cards to be shut off and she wrote checks for invoices that had already been paid (*id.*); and she failed to follow through and complete financial projects (CP 297, ¶ 10). In short, Ms. Rains did not deliver what she promised, and paid herself a grossly excessive salary in light of these deficiencies.

2. Preying on Vulnerable, Financially Unsophisticated People Who Put Their Trust in Her.

Ms. Rains used her status as an attorney to gain the trust of unsophisticated small business owners so as to gain financial/operational control of their businesses for the financial benefit of the Rains defendants. As succinctly stated by one of Ms. Rains's other victims, Ms. Rains "preys on people who put their trust in her" (CP 337).

Ms. Rains here used her role as a lawyer to gain Ms. Rhodes's trust and confidence (CP 570, ¶15; CP 226, ¶ 7). Ms. Rhodes thought that Ms. Rains was representing Ms. Rhodes (CP 227, ¶ 8). The fee agreement that was signed was addressed to Ms. Rhodes and does not mention Keystone (*id.*).

While she was representing Ms. Rhodes, Ms. Rains suggested that Ms. Rhodes contribute \$65,000 to Keystone to keep it going (CP 228). Following that advice, Ms. Rains withdrew her savings to put it into Keystone (*id.*). The next month Ms. Rains suggested that Ms. Rhodes hire Ms. Rains to keep working on accounting and legal issues (CP 228, ¶13). Ms. Rains said that she would pay herself \$2,500 every two weeks, which was almost the same amount Ms. Rhodes—the owner of Keystone--was herself drawing from the company (*id.*). Ms. Rains later had herself appointed as CFO and general counsel (CP 231, ¶ 22). In June, 2013, Ms. Rains increased her salary to over \$10,000 per month (CP 233, ¶ 27). Ms. Rains assured Ms. Rhodes that the company could afford it (*id.*). Ms. Rhodes later learned that the company could not afford such a high salary due to its precarious financial situation which was not disclosed to Ms. Rhodes (CP 233, ¶ 27). Ms. Rhodes also later learned that taxes were not being paid in a timely manner (CP 235, ¶ 35).

After Ms. Rains resigned from Keystone, Ms. Rhodes

discovered documents which are enlightening as to Ms. Rains's motives (CP 235, ¶ 41). Ms. Rains submitted signed documents in a Keystone credit application to the effect that she was Keystone's CFO with 50% ownership in the company (CP 236; CP 288-89). Ms. Rains without authorization submitted documents to the Corporations Division of the State of Washington adding herself as treasurer of Keystone (CP 236, ¶ 41; CP 291-92). Ms. Rains wrote on the file copy of the corporate filing that Keystone "is now co-owned by Emily Rains and Michan Rhodes" (CP 236, ¶ 41; CP 291). On September 8, 2013, Ms. Rains sent an email stating that Ms. Rhodes and she now "co-own the company 50/50 . . ." (CP 237; CP 293). Ms. Rains was never given an ownership interest in Keystone (CP 236-37).

3. Padding an Invoice for Legal Services. Ms. Rains charged a \$15,000 retainer and paid herself that amount without sending a bill (CP 233, ¶ 29), and when the bill was finally produced in discovery after this litigation commenced, the bill contained padded time (a phantom five-hour conference call and a fictitious 9.25-hour on-site meeting with Ms. Rhodes, both at \$415 per hour) (CP 233-34,

¶ 31).⁴ The fee agreement also refers to other attorneys at the law firm who charged \$275 per hour, and Ms. Rhodes did not know that she was being charged \$415 per hour instead of the lesser amount (CP 233, ¶ 30).⁵

To prove that an act or practice is deceptive, neither intent nor actual deception is required. The question is whether the conduct has "the capacity to deceive a substantial portion of the public." *Hangman Ridge*, 105 Wn.2d at 785; *Sing v. John L. Scott*, 134 Wn.2d 24, 30, 948 P.2d 816 (1997). Even accurate information may be deceptive "if there is a representation, omission or practice that is likely to mislead." *Panag, supra*, 166 Wn.2d 27, 50 (quoting *Southwest Sunsites, Inc. v. Fed. Trade Comm'n*, 785 F.2d 1431, 1435 (9th Cir. 1986)). Misrepresentation of the material terms of a transaction or the failure to disclose material terms violates the CPA. *State v. Ralph Williams' N.W. Chrysler Plymouth, Inc.*, 87 Wn.2d, 298, 305 - 09, 325, 553 P.2d 423 (1976); *Griffith v. Centex Real Estate Corp.*, 93 Wn. App. 202,

⁴The bill is set forth at CP 273 (CP 233, ¶ 29). See Appendix C. Ms. Rhodes sets forth five "curious" aspects about the invoice casting doubt upon its authenticity, including the fact that the invoice shows a balance due of \$209.75 which was never billed to Ms. Rhodes (CP 234, ¶ 32; CP 273).

⁵Kyle Duce, another small business owner, also hired Ms. Rains and was flabbergasted at the exaggerated \$20,000 bill he received (CP 337). His small company could not afford the bill, so he gave Ms. Rains about a 12% equity interest in his business (*id.*).

213-14, 969 P.2d 486 (1998). A knowing failure to reveal something of material importance is deceptive under the CPA. *Indoor Billboard/Wash., Inc. v. Integra Telecom of Wash.*, 162 Wn.2d 59, 75, 170 P.3d 10 (2007). Affirmative misrepresentations regarding quality are unfair and deceptive acts *Ramos v. Arnold*, 141 Wn. App. 11, 169 P.3d 482 (2007).

Falsely promising expert financial services; preying on vulnerable, financially unsophisticated business people who put their trust in Ms. Rains because she is an attorney and convincing talker; and submitting bills for phantom time entries all qualify as unfair or deceptive acts or practices which definitely deceive and injure, or have the capacity to deceive and injure, the public interest.

Ultimately, however, whether an unfair or deceptive act or practice has the capacity to deceive a substantial portion of the public is a question of fact. *Holiday Resort Community Ass'n v. Echo Lake Assocs., LLC*, 134 Wn. App. 210, 226-27, 135 P.3d 499 (2006), *review denied*, 160 Wn.2d 1019, 163 P.3d 793 (2007). There is at least a material issue of disputed fact about whether Ms. Rains acts were unfair or deceptive.

It was therefore error for the trial court to grant the Rains defendants' motion to dismiss Ms. Rhodes's CPA claim on summary

judgment.

D. The Rains Defendants Were Acting Within the Scope of Trade or Commerce.

"Trade" and "commerce" include the sale of assets or services. RCW 19.86.010(2). The Rains defendants must concede that the conduct of the Rains defendants was in the course of trade or commerce, as Ms. Rains was advertising and selling her "strategic accounting" services in the business context and Keystone was engaged in the sale of windows and installation services.

Furthermore, Ms. Rains's billing practices also are included within trade and commerce. The Washington Supreme Court has held that lawyers are subject to the CPA with respect to the entrepreneurial aspects of the practice of law. *Short v. Demopolis*, 103 Wn.2d 52, 65, 691 P.2d 163 (1984); *Eriks v. Denver*, 118 Wn.2d 451, 464-64, 824 P.2d 1207 (1992). In the context of providing legal services, entrepreneurial aspects include "how the price of legal services is determined, billed, and collected and the way a law firm obtains, retains, and dismisses clients." *Short*, 103 Wn. 2d at 61. When the Rains defendants were padding their legal bill and charging for phantom phone calls and non-existent meetings, they were thus acting in the course of trade or commerce within the parameters of *Short*.

It was thus error for the trial court to conclude that the conduct

complained of was *not* in the conduct of business or commerce.

E. The Rains Defendants' Conduct Affects the Public Interest.

The standard for public interest impact depends on whether the dispute was a consumer or private transaction. *Hangman Ridge*, 105 Wn.2d at 790. Consumer transactions ordinarily involve purchases of products. *Id.* (citing *Haner v. Quincy Farm Chems., Inc.*, 97 Wn.2d 753, 649 P.2d 828 (1982) (farmer purchased defective wheat seed); *Lidstrand v. Silvercrest Industries*, 28 Wn. App 359, 623 P.2d 710 (1981) (plaintiff purchased defective mobile home)). Private disputes are essentially contract disputes affecting no one but the parties to the contract. *Lightfoot v. MacDonald*, 86 Wn.2d 331, 334, 544 P.2d 88 (1976). “[I]t is the likelihood that additional plaintiffs have been or will be injured in exactly the same fashion that changes a factual pattern from a private dispute to one that affects the public interest.” *Hangman*, 105 Wn.2d at 790; *see also, Indoor Billboard/Wash., Inc. v. Integra Telecom of Wash., Inc.*, 162 Wn.2d 59, 74, 170 P.3d 10 (2007).

Several factors are evaluated to determine if a public interest arises from a private dispute. "(1) Were the alleged acts committed in the course of defendant's business? (2) Did defendant advertise to the public in general? (3) Did defendant actively solicit this particular

plaintiff, indicating potential solicitation of others? (4) Did plaintiff and defendant occupy unequal bargaining positions?" *Id.* at 790-91. These factors are not dispositive of a public interest impact and not all factors must be present. *Id.* at 791.

Here all of these factors are met: (1) The unfair and deceptive acts (misrepresentation, preying on trusting business people and billing for work she did not do (CP 233-34)) were committed in the course of the business of Ms. Rains and her eponymous companies. (2) Ms. Rains advertised to the public in general (CP 226, ¶7). (3) Ms. Rains actively pursued doing legal and financial accounting work for Ms. Rhodes and paid herself exorbitant sums, once securing a foothold at a financially unsophisticated small business, such as Keystone, with relatively large revenues. (4) Ms. Rhodes, being a financially unsophisticated small business owner, and the Rains defendants did occupy unequal bargaining positions, as Ms. Rains had superior knowledge as an attorney about the relevant legal issues and used her position of trust and confidence to gain undue influence over her clients, Ms. Rhodes and Keystone, who were unsophisticated and relied upon the representations of Ms. Rains.

Under a recent legislative amendment to the CPA, in a private action in which an unfair or deceptive act or practice is alleged under

RCW 19.86.020, a claimant may establish that the act or practice is injurious to the public interest because it “(a) [i]njured other persons; (b) had the capacity to injure other persons; or (c) has the capacity to injure other persons.” RCW 19.86.093(3). Having the capacity to injure is not the same as having the capacity to deceive. *Klem, supra*, 176 Wn.2d at 804 (Madsen, J. concurring).

Here Ms. Rains’s conduct (1) injured other persons, e.g., Kyle Duce (CP 337), (2) *had* the capacity to injure other persons (through Ms. Rains’s advertising and web presence), and (3) *has* the capacity to injure other persons, because Ms. Rains is still out there using her same techniques.

It is a reasonable inference that, if Ms. Rains is misrepresenting her ability in person, in advertising and on the internet to one person, she is doing the same thing to other people. Ms. Rains got a 12% interest in another small business by exaggerating her invoice and doing work of minimal value (CP 337). She certainly did not deliver on her promises of high quality financial work to Ms. Rhodes. It is highly likely that she does not deliver on similar promises made to other people.

In addition, Ms. Rains preys on people who trust her. People trust her because of her verbal skills and because they think attorneys

are trustworthy. Through her believable promises of a cadre of professional financial experts being available, Ms. Rains has found a way to get inside a struggling company's management to unduly profit from the relationship. She has her husband and sister hired on to do tasks they are not qualified to perform. She will take advantage of her position in the company by extracting value where she can, e.g., by ordering some \$39,000 worth of materials, but paying only \$8,000 for it (CP 231). She will try to create a basis to claim ownership or a part ownership of the company, when there is no legal or legitimate basis for such a claim. She tried to do that with Keystone by attempting to lay a basis that she had a 50% ownership in Keystone, when there is absolutely no evidence that she was ever given or promised any such ownership interest.

Moreover, an attorney's sending an inflated invoice billing for time which was not spent, such as a phantom five-hour conference call or a fictitious 9.25 hour meeting, has the *capacity* to injure other people. Ms. Rains's non-specific billing entries are not unique to Ms. Rhodes (CP 337; CP 275). The Rains defendants' conduct injured persons other than plaintiffs, i.e., other small business owners with whom the Rains defendants used the same tactics. See, the Declaration of Kyle Duce (CP 337), who was another small business

owner victimized by Ms. Rains. If an attorney pads one bill to one client, it is likely that it is not the first or last time the attorney has engaged in such a practice.

In summary, the Rains defendants' conduct certainly had the *capacity* to injure other small business owners who saw her advertisements and internet postings, and hired her to do work for them, even if Ms. Rhodes was the unfortunate one of that cohort, who on that fateful day in seeking assistance from the SBA, fell prey to Ms. Rains's predatory machinations. Therefore, plaintiffs have satisfied the public interest test by meeting the requirements of RCW 19.86.093(3).

Finally, determining whether the complained of conduct here affects the public interest is also is factual in nature. *Hangman Ridge*, 105 Wn.2d at 791; *Bankhe v. Ahrens*, 172 Wn. App. 281, 293, 294 P.3d 729 (2012). The granting of summary judgment of dismissal of the CPA claim was improper.

F. Plaintiffs Presented a Prima Facie Showing of Proximate Cause and Damages.

To prove causation, the "plaintiff must establish that, but for the defendant's unfair or deceptive practice, the plaintiff would not have suffered an injury." *Indoor Billboard/Washington, Inc. v. Integra Telecom of Washington*, 162 Wn.2d 59, 84, 170 P.3d 10

(2007).

In *Panag v. Farmers Insurance Co. of Washington*, 166 Wn.2d 27, 57, 204 P.3d 885 (2009) (quoting *Mason v. Mortg. Am. Inc.*, 114 Wn.2d 842, 854, 792 P.2d 142 (1990)), our Supreme Court held, "[T]he injury requirement is met upon proof the plaintiff's 'property interest or money is diminished because of the unlawful conduct even if the expenses caused by the statutory violation are minimal.'" Investigative expenses, taking time off from work, travel expenses, and attorney fees are sufficient to establish injury under the CPA. See *Panag*, 166 Wn.2d at 62; *Walker v. Quality Loan Service Corp. of Washington*, 176 Wn. App. 294, 320, 308 P.3d 716 (2013). No monetary damages need be proven; inconvenience is sufficient. *Stephens v. Omni Insurance Co.*, 138 Wn. App. 151, 175-76, 159 P.3d 10 (2007).

Causation may also be shown by establishing that plaintiff relied upon a misrepresentation of fact, or by demonstrating that the defendant "induced" the plaintiff to act or refrain from acting. *Pickett v. Holland America Line*, 101 Wn. App. 901, 916, 6 P.3d 63 (2000).

Proximate causation is typically a question of fact for the jury. *Holiday Resort, supra*, 134 Wn. App. at 227.

Here the Rains defendants induced Ms. Rhodes to expend

exorbitant amounts based on a false promise of bringing her company back to financial health, a promise that Ms. Rains had no business making. Ms. Rains induced Ms. Rhodes to put \$65,000 of Ms. Rains's own money into Keystone, and later Ms. Rhodes added another \$19,000 (CP 228, 234). Keystone and Ms. Rhodes were also obviously affected by the excessive compensation Keystone paid to Ms. Rains, her companies, her husband, and her sister. Keystone and Ms. Rhodes were damaged when Ms. Rains misrepresented the financial condition of the company by failing to disclose the financial problems (CP 233, 235). Ms. Rhodes also had Keystone pay \$15,000 to the Rains defendants, which the Rains defendants used up by padding their invoice (CP 233-34).

Moreover, plaintiffs were damaged by Ms. Rains' gaining the trust and confidence of Ms. Rhodes, and using that to obtain a position at Keystone to launch Ms. Rains's plan to run the company and gain an ownership position in it, under the guise of a promise to rehabilitate the company that Ms. Rhodes had built from scratch. Ms. Rains's acts were particularly injurious because she lacked the skill/capacity to carry out the promised services. The ultimate failure of Ms. Rhodes's company is a case in point.

In addition, "[i]njury and causation are established if the plaintiff loses money because of unlawful conduct." *Pickett v. Holland*

America Line, supra, 101 Wn. App. 901, 916. Loss of use of one's own money or "loss of goodwill" constitutes injury under the CPA. *Mason v. Mortgage America, Inc.*, 114 Wn.2d 842, 854-55, 792 P.2d 142 (1990); *Griffin v. Allstate Insurance Co.*, 108 Wn. App. 133, 149, 29 P.3d 777 (2001). Here Ms. Rhodes lost the source of her income, as well as monies she put into Keystone, and was deprived of the funds which otherwise went to the Rains defendants out of proportion to the value they added to the company.

Furthermore, in *Stephens v. Omni Insurance Company*, 138 Wn. App. 151, 170, 180, 159 P.3d 10 (2007) the court of appeals, noting the liberal construction of the CPA under RCW 19.86.920 and the "laudable purpose" of the act in protecting Washington citizens from unfair and deceptive trade and commercial practices, stated that "[w]hen a misrepresentation causes inconvenience that deprives the claimant of the use and enjoyment of his property, the injury element is satisfied." *Stephens* at 180. Here the plaintiffs have at least shown the "inconvenience" of not having promised expert accounting--financial reports and proper accounting records--for the fifteen months Ms. Rains was in charge and the corresponding deprivation of the enjoyment of Ms. Rhodes in her business.

In *Moratti v. Farmers Ins. Co. of Washington*, 162 Wn. App. 495, 254 P.3d 939 (2011), this Court reversed the trial court's refusal

to submit plaintiffs' CPA claim to the jury in an insurance bad faith case. At the conclusion of the evidence, the trial court granted the insurer's CR 50 motion to remove the CPA claim from the jury's consideration on the grounds that the insured's out-of-pocket payment of \$600,000 towards a settlement with the injured party was not an "injury" for purposes of the CPA. *Moratti*, 162 Wn. App. at 510. (The insured was the landlord of a rental home where the renter's infant sustained extensive burn injuries as a result of a fire at the home; the landlord assigned the injured child his claims against the property insurer for bad faith and violation of the CPA).

Reversing the trial court, this Court noted that "[t]he \$600,000 is clearly a business loss. The insured was a landlord and the liability stemmed from his rental of property in the course of his business." *Moratti*, 162 Wn. App. at 510. The court rejected the insurer's argument that the insured suffered no harm when the judgment was entered against him because "it contained a covenant not to execute[,]" noting that even though the covenant "insulates the insured from liability, it still constitutes a real harm because of the potential effect on the insured's credit rating ... [as well as] damage to reputation and loss of business opportunities." *Id.* at 511 (quoting *Safeco Ins. Co. of Am. v. Butler*, 118 Wn.2d 383, 399, 823 P.2d 499 (1992)) (internal citations and marks omitted). *Moratti* thus follows

a long line of Washington cases making clear that "injury" under the CPA is broadly construed.

The Rains defendants claim that Michael Rains did nothing wrong, but he participated in the overbilling and was an agent of the Rains defendants. He is also liable as Ms. Rains's spouse while she was acting to benefit the marital community.

Accordingly, the plaintiffs have made out a *prima facie* case of violation of the CPA and they should have had their day in court on that claim.

G. The Rains Defendants Failed to Meet Their Burden to Show that There Were no Disputed Issues of Material Fact.

The Rains defendants, as the moving party were required to establish that no genuine issue of material fact existed in regard to public interest. *Atherton Condominium Apartment-Owners Assn.*, *supra*, 115 Wn.2d 506, 516. They needed to demonstrate that the only reasonable conclusion from the evidence is that the transactions involved did not affect the public interest. *Vallandigham v. Clover Park School District No. 400*, 154 Wn.2d 16, 26, 109 P.3d 805 (2005). They failed to do so, as there is in the very least an issue of material fact regarding whether other people had the capacity to be injured by the Rains defendants' conduct. See, *Michael v. Mosquera-Lacy*, 140 Wn. App. 139, 153, 165 P.3d 43 (2007), *reversed on other grounds*,

165 Wn.2d 595, 200 P.3d 695 (2009) (the court of appeals reversing summary judgment where public interest requirement under the CPA depended upon the outcome of material issues of disputed fact). Thus it was improper for the trial court to grant the Rains defendants' motion for summary judgment.

H. Appellants Are Entitled to Attorney's Fees.

The prevailing plaintiff in a CPA action is entitled to attorney's fees. RCW 19.86.090. *Sato v. Century 21*, 101 Wn.2d 599, 603, 681 P.2d 242 (1984). Where a statute authorizes fees to the prevailing party, they are available on appeal as well as in the trial court. *Eagle Point Condominium Owners Association v. Coy*, 102 Wn. App. 697, 716, 9 P.3d 898 (2000). Ms. Rhodes should be considered the prevailing party in this action and should be awarded attorney's fees.

IV. CONCLUSION

As a matter of public confidence in our state's business environment, the conduct of defendant Rains needs to be deterred, and CPA actions help serve that purpose. For the reasons set forth above, this Court should reverse the trial court's order granting partial summary judgment dismissing appellants' CPA claim and remand the matter to the trial court for trial on the CPA claim. Appellants should also be awarded attorney fees on appeal.

RESPECTFULLY SUBMITTED: November 4, 2015.

Law Offices of Dan R. Young

By Dan R. Young
Dan R. Young, WSBA # 12020
Attorney for Appellants Rhodes
and Keystone

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Samuel S. Chung

Honorable Kimberley Prochnau
Hearing Date/Time: July 18, 2014 @ 10:00am
With Oral Argument

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

MICHAN RHODES, an individual; KEYSTONE
WINDOWS AND DOORS, a Washington Corporation,
Plaintiffs,

v.

EMILY SHARP RAINS and MICHAEL RAINS,
individually and their marital community; RAINS LAW
GROUP, a Professional Limited Liability Company;
HEATHER CHRISTENSEN and JOHN DOE
CHRISTIANSON, and their marital community,
Defendants.

EMILY SHARP RAINS and MICHAEL RAINS,
individually and their marital community,
Third-Party Plaintiffs,

v.

TONY DAVIS,
Third-Party Defendant,

v.

AMERICAN CONTRACTORS INDEMNITY
COMPANY,
Third-Party Defendant,

v.

RLI INSURANCE COMPANY,
Third-Party Defendant.

No. 12-2-40707-0 SEA

**PROPOSED ORDER GRANTING
MOTION FOR PARTIAL SUMMARY
JUDGMENT AGAINST PLAINTIFFS
IN PART AND DENYING
IN PART**

PROPOSED ORDER GRANTING MOTION FOR
PARTIAL SUMMARY JUDGMENT AGAINST
PLAINTIFFS - PAGE 1

THE COLLINS LAW GROUP PLLC
2806 NE SUNSET BLVD., SUITE A
RENTON, WA 98056
TEL: 425.271.2575
FAX: 425.271.0788

1 **THIS MATTER** having come on regularly before the undersigned judge of the above-
2 entitled court, and Defendants Emily and Michael Rains and Rains Law Group having appeared
3 through their attorney of record, and Plaintiffs Michan Rhodes and Keystone Windows and
4 Doors, having appeared through their attorney of record, and the court having heard arguments
5 of counsel, reviewed the following:
6 1. **Motion for Partial Summary Judgment Against Plaintiffs and attached declarations and**
7 **exhibits;**
8 2. **2/14/14 Declaration of Emily Rains in Support of Motion for Summary Judgment**
9 **Against Plaintiffs with attached exhibits;**
10 3. **2/14/14 Declaration of Adam C. Collins in Support of Motion for Summary Judgment**
11 **Against Plaintiffs with attached exhibits;**
12 4. **Declaration of Emily Sharp Rains in Support of Motion for Partial Summary Judgment**
13 **Against Plaintiffs and all attached exhibits;**
14 5. **Initial Order dated 3/12/13 issued by Administrative Law Judge Mark C. Ebbeson in**
15 **State of Washington Office of Administrative Hearings for the Employment Security**
16 **Department Docket No. 01-2013-01078;**
17 6. **6/20/14 Declaration of Adam C. Collins in Support of Motion for Partial Summary**
18 **Judgment Against Plaintiffs and all attached exhibits;**
19 7. **Plaintiffs' Response to Motion for Partial Summary Judgment Against Plaintiffs and all**
20 **attached exhibits;**
21 8. **Reply in Support of Motion for Summary Judgment Against Plaintiffs, and**
22
23

1 9. Declarations of Glenna Mileson, William Shaw,
2 Kyle Duce, Grace Alonzo, Michan Rhodes;
3 10. and Michael Rovich

4 Supplemental Declarations of Michan Rhodes.
5 11. and Declaration of Brian Krikorian;

6 Also papers submitted with prior motion for Summary judgment
7 and the affidavits, records, and files herein, and the Court being fully advised in the premises,
8 being incorporated by reference

8 now, therefore, it is hereby:

9 ORDERED, ADJUDGED AND DECREED that the Motion for Partial Summary
10 Judgment Against Plaintiffs is GRANTED. Therefore, this Court makes the following rulings:
11 *in part and denied in part.*

12 1. ~~Plaintiffs Keystone Windows and Doors and Michan Rhodes are ORDERED to~~
13 ~~pay to Defendant Emily Sharp Rains \$48,461.56 for illegal refusal to pay wages owed to~~
14 ~~Keystone Windows and Doors employee Emily Sharp Rains in violation of RCW 49.48.010 and~~
15 ~~.030 and RCW 49.52.050 and .070;~~ *Summary judgment is denied on*
16 *the wage claim at this time.*

17 2. All claims of legal malpractice asserted by Plaintiffs against Rains Law Group
18 are dismissed with prejudice;

19 3. All claims of legal malpractice asserted by Plaintiffs against Emily Rains,
20 personally, are dismissed with prejudice;

21 4. All claims for violation of the Consumer Protection Act asserted by Plaintiffs
22 against Rains Law Group are dismissed with prejudice;

23 5. All claims for violation of the Consumer Protection Act asserted by Plaintiffs
against Michael Rains, personally, are dismissed with prejudice; and

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6. All claims for violation of the Consumer Protection Act asserted by Plaintiffs against Emily Rains, personally, are dismissed with prejudice

DONE IN OPEN COURT this 25th day of July, 2014.


~~JUDGE KIMBERLEY A. REICHEL~~

Presented by:

/s/ Jami K. Elison
Jami K. Elison, WSBA No. 31007
Attorneys for Defendants Emily and
Michael Rains and Rains Law Group

Copy Received
Dem R. Young, WSBA 12020
Attorney for Plaintiffs and
Third Party Defendant

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Honorable Samuel Chung
FILED
KING COUNTY, WASHINGTON
SEP 02 2014
SUPERIOR COURT CLERK
BY Janet Lipton
DEPUTY

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

MICHAN RHODES; KEYSTONE WINDOWS AND
DOORS,
Plaintiffs,
v.
EMILY SHARP RAINS et. al.,
Defendants.

No. 12-2-40707-0 SEA
SPECIAL VERDICT FORM

EMILY SHARP RAINS and MICHAEL RAINS,
Third-Party Plaintiffs,
v.
TONY DAVIS,
Third-Party Defendant.

We, the jury, make the following answers to the questions submitted by the court:

**PLAINTIFFS' CLAIM FOR BREACH OF FIDUCIARY DUTY
AGAINST DEFENDANT EMILY RAINS**

**A. During Period Prior to Emily Rains Being Hired In-house by Keystone Windows and
Doors**

Question No. 1

Did Plaintiff prove a breach of fiduciary duty by Defendant Emily Rains when Emily Rains was engaged through her law firm, Rains Law Group, to act as an outside attorney to Ms. Rhodes or Keystone?

Answer: Yes (Yes or No)

If your answer is yes, then answer Question No. 2. If your answer is no, then skip question No. 2 and No. 3 and answer Question No. 4.

Question No. 2

1 Did Plaintiff prove that damages proximately resulted from a breach of fiduciary duty when
2 Emily Rains was engaged through her law firm, Rains Law Group, to act as an outside attorney
to Ms. Rhodes or Keystone?

3 Answer: Yes (Yes or No)

4 If your answer is yes, then answer Question No. 3. If your answer is no, then skip question No.
5 3 and answer Question No. 4.

6 Question No. 3

7 What amount of damage do you find to have proximately resulted from a breach of fiduciary
8 duty when Emily Rains was engaged through her law firm, Rains Law Group, to act as an
outside attorney to Ms. Rhodes or Keystone?

9 Answer: \$ 7685.²⁹ (Insert dollar amount)

10 B. During Period When Emily Rains was Employed In-house at Keystone Windows and
Doors as General Counsel and CFO

11 Question No. 4

12 Did Plaintiff prove a breach of fiduciary duty by Defendant Emily Rains during the period of
time when Emily Rains was employed in-house as an officer of Keystone?

13 Answer: Yes (Yes or No)

14 If your answer is yes, then answer Question No. 5. If your answer is no, then skip question No.
15 5 and No. 6 and answer Question No. 7.

16 Question No. 5

17 Did Plaintiff prove that damages proximately resulted from a breach of fiduciary duty during
the time period when Emily Rains was employed in-house as an officer of Keystone?

18 Answer: Yes (Yes or No)

19 If your answer is yes, then answer Question No. 6. If your answer is no, then skip question No.
20 6 and answer Question No. 7.

21 Question No. 6

22 What amount of damage do you find to have proximately resulted from a breach of fiduciary
23 duty during the time period when Emily Rains was employed in-house as an officer of
Keystone?

Answer: 688,764.³⁸ (Insert dollar amount)

1 **DEFENDANT EMILY RAINS'S CLAIM FOR FAILURE TO PAY**
2 **WAGES AGAINST PLAINTIFF KEYSTONE WINDOWS AND**
3 **DOORS**

4 **Question No. 7**

5 Did Defendant Emily Rains prove that Plaintiff withheld wages?

6 Answer: Yes (Yes or No)

7 If your answer is yes, then answer Question No. 8. If your answer is no, skip Question No. 8
8 and No. 9 and answer Question No. 10.

9 **Question No. 8**

10 What amount of damages resulted from Plaintiff withholding wages?

11 Answer: \$18,780.⁰⁸ (Insert dollar amount)

12 **Question No. 9**

13 Did Plaintiff willfully withhold wages?

14 Answer: Yes (Yes or No)

15 **THIRD PARTY PLAINTIFFS MICHAEL AND EMILY RAINS'S**
16 **CLAIM FOR BREACH OF CONTRACT AGAINST THIRD PARTY**
17 **DEFENDANT TONY DAVIS**

18 **Question 10**

19 Was there a contract between Emily and Michael Rains and Tony Davis?

20 Answer: Yes (Yes or No)

21 If yes, go to question 11. If your answer is no proceed to direction for signing this form

22 **Question No. 11**

23 Did Defendant Tony Davis breach his contract with Emily and Michael Rains regarding
construction services?

Answer: No (Yes or No)

If your answer is yes, then answer Question No. 12. If your answer is no, then skip Question
No. 12 and proceed to the direction and signing of this form.

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Question No. 12

What amount of damages resulted from the breach of contract by Tony Davis regarding construction services?

Answer: _____ (Insert Dollar Amount)

(DIRECTION: Sign this verdict form and notify the bailiff.)


Presiding Juror

RIG

7/20/2011

Keystone Windows and Doors
2215 4th ave S
Seattle, WA 98134

Date	Desc	Duration :	Rate	Amount	Total
6/22/2011	Meeting with bankruptcy attorney and Michan, post meeting discussion with Michan Rhodes	2.25	\$415.00	\$933.75	\$933.75
6/23/2011	Review financial statements from Michan	0.75	\$415.00	\$311.25	\$1,245.00
6/23/2011	Telephone call from Michan Rhodes	0.5	\$415.00	\$207.50	\$1,452.50
6/23/2011	Call from Michan Rhodes and Lauren Tinko	0.5	\$415.00	\$207.50	\$1,660.00
6/23/2011	Email to Gloria Naylor	0.25	\$415.00	\$103.75	\$1,763.75
6/23/2011	Call with Gloria Naylor to discuss strategy	0.75	\$415.00	\$311.25	\$2,075.00
6/23/2011	Follow up with Michan Rhodes and Lauren Tinko	0.5	\$415.00	\$207.50	\$2,282.50
6/24/2011	Call from Michan Rhodes	0.25	\$415.00	\$103.75	\$2,386.25
6/24/2011	Call from Michan Rhodes re income and assets tax analysis	0.25	\$415.00	\$103.75	\$2,490.00
6/27/2011	Call from Michan re summary of activities over the weekend	0.5	\$415.00	\$207.50	\$2,697.50
6/28/2011	On-site: Asset list, review assets with Mike, review list of employees to be paid and those to be terminated, identify and discuss next steps	7.75	\$415.00	\$3,216.25	\$5,913.75
6/29/2011	Call from Michan Rhodes	0.15	\$415.00	\$62.25	\$5,976.00
6/29/2011	Call with Michan Rhodes, Tinko, Mustoe, Rob Yarbrough and then again with Michan Rhodes to discuss ongoing changes with the business	1	\$415.00	\$415.00	\$6,391.00
6/29/2011	Prepare timeline and list of executables to sell business to Mike Gump	3.75	\$415.00	\$1,556.25	\$7,947.25
6/30/2011	Call from Michan Rhodes	0.25	\$415.00	\$103.75	\$8,051.00
6/30/2011	Conference call with Michan Rhodes	5	\$415.00	\$2,075.00	\$10,126.00
7/1/2011	Call from Michan Rhodes	0.25	\$415.00	\$103.75	\$10,229.75
7/1/2011	On-site with Michan Rhodes	9.25	\$415.00	\$3,838.75	\$14,068.50
7/3/2011	Discussion re: other potential buyers, prep NDA for Gustav Swanson	1.5	\$415.00	\$622.50	\$14,691.00
7/5/2011	Several calls from Michan Rhodes	1.25	\$415.00	\$518.75	\$15,209.75
7/1/2011	Remainer Deposit				-\$19,000.00
Outstanding Balance					\$209.75

3518 Fremont Ave N, #382 Seattle WA 98103
206-283-5593 - office@rainlawgroup.com

RAINS_KEYSTONE

00096

EXHIBIT G

Appendix C

CP 273

DECLARATION OF SERVICE

I, Dan R. Young, declare to be true under penalty of perjury under the laws of the State of Washington as follows:

1. I am an attorney representing the appellants Michan Rhodes and Keystone Windows and Doors, Inc. in this action.

2. On November 5, 2015, I sent by the USPS, first class mail with pre-paid postage affixed, a copy of the foregoing Brief of Appellants Rhodes/Keystone to the following:

Masters Law Group, P.L.L.C.
Kenneth W. Masters, Esq.
241 Madison Avenue N.
Bainbridge Island, WA 98110

Dated: November 5 , 2015, at Seattle, Washington.


Dan R. Young

NOV 05 11:34

COUNTY OF PIERCE
STATE OF WASHINGTON