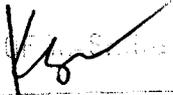


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DIVISION II

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COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON
BY 
DEPUTY

TIMOTHY JACKOWSKI AND ERI TAKASE,

Appellants,

vs.

DAVID BORCHELT, et ux., et al.

Respondents

JACKOWSKIS' REPLY BRIEF

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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	ARGUMENT	1
	A. Organization	1
	B. Statement of Facts	2
	C. New Arguments	2
	D. Legal Authority	2
	E. Reply to Borchelts	3
	1. Negligent Misrepresentation	3
	2. Chapter 64.06 RCW, Form 17	5
	3. Reasonable Reliance	7
	a. Negligent Misrepresentation	8
	b. Mason County Letter	10
	c. Fraud and Fraudulent Concealment	13
	4. Proximate Cause	16
	5. Breach of Contract	17
	6. Attorney Fees	18
	F. Reply to Johnson and Hawkins Poe	18
	1. Scope of Review	18
	2. Negligent Misrepresentation	19

3.	<u>Alejandre</u> and the Economic Loss Rule	24
	a. Breach of Contract Claims	24
	b. Professional Malpractice Claims	29
	c. Sudden and Dangerous Event	30
4.	Right to a Jury Trial	31
G.	Reply to Conklin and Windermere	33
	1. The Cross-Appeal	33
	2. Reasonable Reliance	34
	3. Floor Cracks	38
III.	CONCLUSION	39

TABLE OF AUTHORITIES

Cases

<u>Alejandre v. Bull</u> , 159 Wn.2d 674, 153 P.3d 864 (2007)	3, 4, 5, 13, 18, 24, 25, 28, 29, 39
<u>Badgett v. Security State Bank</u> , 116 Wn.2d 563, 807 P.2d 356 (1991) . .	17
<u>Bloor v. Fritz</u> , 134 Wn. App. 718, 180 P.3d 805 (2008)	3, 6, 27
<u>Brinkerhoff v. Campbell</u> , 99 Wn. App. 692, 994 P.2d 911 (2000)	21, 34
<u>Brown v. Safeway Stores, Inc.</u> , 94 Wn.2d 359, 617 P.2d 704 (1980)	32, 33
<u>Coleman v. Highland Lumber, Inc.</u> , 46 Wn.2d 549, 283 P.2d 123 (1955)	32
<u>ESCA Corp. v. KPMG Peat Marwick</u> , 134 Wn.2d 820, 959 P.2d 651 (1998)	8, 35, 36
<u>Glenn v. Russi</u> , 2008 WL 2582977 (Wn. App. Div. 2) .	3, 6, 14, 17, 30, 31
<u>Guntheroth v. Rodaway</u> , 107 Wn.2d 170, 727 P.2d 982 (1986)	19
<u>Hausken v. Hodson-Feenaughty Co.</u> , 109 Wash. 606, 187 P. 319 (1920)	17
<u>Jeness v Moses Lake Dev. Co.</u> , 39 Wn.2d 151, 234 P.2d 865 (1951)	8, 15
<u>Knudsen v. Patton</u> , 26 Wn. App. 134, 611 P.2d 1354 (1980)	37
<u>Lawyers Title Ins. Co. v. Baik</u> , 147 Wn.2d 536, 55 P.3d 619 (2002)	35, 36

<u>Preview Properties, Inc. v. Landis</u> , 161 Wn.2d 383, 165 P.3d 1 (2007)	27, 28
<u>Ranta v. German</u> , 1 Wn. App. 104, 459 P.2d 961 (1969)	32
<u>Ross v. Kirner</u> , 162 Wn.2d 493, 172 P.3d 701 (2008)	3
<u>Scavenius v. Manchester Port Dist.</u> , 2 Wn. App. 126, 467 P.2d 372 (1970)	32, 33
<u>State v. Ford</u> , 137 Wn.2d 472, 973 P.2d 452 (1999)	2
<u>Stiley v. Block</u> , 130 Wn.2d 486, 925 P.2d 194 (1994)	15
<u>Stuart v. Coldwell Banker Commercial Group, Inc.</u> , 109 Wn.2d 406, 745 P.2d 1284 (1987)	30, 31
<u>Svendson v. Stock</u> , 143 Wn.2d 546, 23 P.3d 455	6
<u>Trask v. Butler</u> , 123 Wn.2d 835, 872 P.2d 1080 (1994)	29
<u>U.S. v. Kitsap Physician's Services</u> , 314 F.3d 995 (9th Cir. (Wash.) 2002)	13
<u>Wagner v. Wagner</u> , 95 Wn.2d 94, 621 P.2d 1279 (1980)	25
<u>Watkins v. Siler Logging Co.</u> , 9 Wn.2d 703, 116 P.2d 315 (1941)	33

Constitution

Const. Art. I, § 21	32, 33
---------------------------	--------

Statutes

RCW 4.22.005	36
RCW 18.86.030	8, 25, 29

RCW 18.86.050	9, 25
RCW 18.86.110	28
RCW 64.06.030	5
RCW 64.06.050	5, 6, 7, 21, 25
RCW 64.06.070	5, 6

Rules

CR 38	32
CR 39	32
ER 411	31
RAP 2.5(a)	2

Other Authority

Restatement (Second) of Torts § 552A	35, 36
Trautman, <u>Right to Jury Trial in Washington: Present and Future</u> , 34 Wash. L. Rev. 401 (1959)	32

I. INTRODUCTION

Tim and Eri Jackowski were hit by a perfect storm when they bought their home from David and Robin Borchelt; they were blindsided by the twin forces of misrepresentation and incompetence. But for the Borchelts' and their agent's (Jef Conklin of Windermere) concealment and misrepresentations, the Jackowskis' agent's (Robert Johnson of Hawkins Poe) incompetence would not have mattered so much. Honest answers on Form 17 and the cracks in the basement floor would have been enough warning signs to the Jackowskis, even while Johnson was misinterpreting one document, not passing on another, and only recommending a home and well inspection. Likewise, if Johnson had interpreted the Mason County letter differently, had given the Jackowskis the slope stability report, and had recommended a geotech inspection, they would not have bought the house.

II. ARGUMENT

A. Organization

The Jackowskis' opening brief covered multiple issues and parties, all within 55 pages (the Jackowskis sought and received leave to file an overlength brief; *see* Order of March 25). Counsel organized the brief by issue. In contrast, this Reply will largely be organized by party.

B. Statement of Fact

Respondents have quarreled with the Jackowskis' statement of fact. The Jackowskis stand by it and change not a word nor a citation.

C. New Arguments

The Jackowskis raised most of the arguments below that Respondents now complain they did not. *See, e.g.*, arguments on "sudden, dangerous event," at CP 116, 121, 376, on an agent's statutory duties, at CP 115-17, on instances of lost emails, CP 1059-60, on failure to pass on documents, CP 840, and on issues of malpractice claims and tort claims where no contractual privity exists at RP 09/14/07 at 32-34 and 42, CP 115-17. Any new argument is a supporting argument to the errors claimed on review. Moreover, RAP 2.5(a) is discretionary. State v. Ford, 137 Wn.2d 472, 477, 973 P.2d 452 (1999). Conklin complains that certain arguments were not made as to *him*. This distinction is excessively nice.

D. Legal Authority

Respondents complain that the Jackowskis failed to cite legal authority for their arguments, pointing to the Jackowskis' summary of argument. The citations are in the argument itself, not the summary.

E. Reply to Borchelts

1. Negligent Misrepresentation

The trial court granted summary judgment to the Borchelts on the claim of negligent misrepresentations, holding the claim is barred by Alejandro v. Bull and the economic loss rule. 159 Wn.2d 674, 153 P.3d 864 (2007). Jackowskis quarrel with this; their injury was caused by a sudden, dangerous event, properly remediable in tort. *See infra* at 30. They also assign error insofar as it bars a claim for rescission, which is not a recovery.

In response, the Borchelts argue that the only permissible remedy for negligent misrepresentation is monetary damages. Borchelt Response at 22. This is incorrect. Courts often allow the equitable remedy of contract rescission for negligent misrepresentation. *See, e.g., Ross v. Kirner*, 162 Wn.2d 493, 497-98 and 501, 172 P.3d 701 (2008); Glenn v. Russi, 2008 WL 2582977 (Wn. App. Div. 2) at *3; Bloor v. Fritz, 143 Wn. App. 718, 738-40, 180 P.3d 805 (2008). The Borchelts do not respond to the argument that rescission is not a recovery and not barred by the economic loss rule.

The Borchelts argued that the issue of innocent misrepresentation was not before the trial court. That issue is part of the argument that the economic loss rule does not bar the equitable remedy of contract rescission for negligent

misrepresentation. (Alternatively, in the event that this Court holds that it does, the Jackowskis may still seek rescission for innocent misrepresentations.) There are three misrepresentations that go to the basis of a bargain for which courts will grant contract rescission: innocent, intentional or fraudulent, and *negligent* misrepresentations. The different words used reflect the different degrees of culpability.

Innocent misrepresentations are made by a person who has no idea of their falsehood. Intentional or fraudulent misrepresentations are made by a person who knows that what he is saying is untrue, but chooses to lie. *Negligent* misrepresentations are made by someone who *should have known* that his statements were untrue, but makes them anyway. In describing this degree of culpability, courts use language often found in tort: the maker of the representation has failed “to exercise reasonable care or competence in obtaining or communicating the information.” The fact that tort language is used does not transform an action for contract rescission into an action in tort.

Applying the bright line distinction of the Alejandre court, rescission as an equitable remedy falls on the “contract” side of the line: there must be a *contract* to rescind. 159 Wn.2d at 683. Truly, however, rescission does not “fall” anywhere; it is not a contract remedy in that it is an *avoidance* of the

contract, not an affirmation and recovery thereunder. Nor is it a recovery in tort. The economic loss rule does not apply.

That this is so is evident from the other major point of the Alejandro court's holding: "the economic loss rule applies where the parties could or should have allocated the risk of loss, or had the opportunity to do so." 159 Wn.2d at 687. With misrepresentations that go to the basis of the bargain, the deceived party did not have the opportunity to allocate the risk of loss! Here, the Borchelts' and Conklin's misrepresentations and Johnson's incompetence meant that Jackowskis had no opportunity to allocate the risk of loss.

2. Chapter 64.06 RCW, Form 17

The trial court also granted summary judgment to the Borchelts on any claims for fraud or for rescission arising out of the Borchelts' misrepresentations on Form 17. The Borchelts argue that there is only one remedy for their misrepresentations on Form 17, the right of statutory rescission within the three-day window created by RCW 64.06.030:

Except as provided in RCW 64.06.050, nothing in this chapter . . . creates [sic] any new right or remedy for a buyer of residential real property other than the right of rescission exercised on the basis and within the time limits provided in this chapter.

Borchelt Response at 13, *quoting* RCW 64.06.070, *omitting* the following:

. . . shall extinguish or impair any rights or remedies of a buyer of real

estate against the seller or against any agent acting for the seller otherwise existing pursuant to common law, statute, or contract; nor shall anything in this chapter . . .

The statute is clear. The Jackowskis may still seek rescission for fraud, fraudulent concealment, and negligent, fraudulent, and innocent misrepresentation, based on the representations on Form 17. *See Bloor*, 143 Wn. App. at 725-26 (trial court granted rescission for negligent misrepresentations made on Form 17; decision affirmed by this Court).¹ The Borchelts' interpretation of the statute conflicts with this Court's precedent in *Bloor*.

The Borchelts also argue that RCW 64.06.050 limits their liability for inaccurate disclosures on Form 17 to cases where they had actual knowledge of the inaccuracy. This is correct. The Jackowskis detailed instances where the Borchelts had actual knowledge of the floor cracks they concealed; of the fill; of the engineer's siting the addition on the west side instead of where the Borchelts built it on the north side; of six inches of soil sliding out from

1

See Svendson v. Stock, 143 Wn.2d 546, 558, 23 P.3d 455 ("it is difficult to believe that the Legislature intended to eviscerate preexisting protections afforded to home buyers prior to the adoption of the seller disclosure statute. A more reasonable interpretation of the legislature's intent is that it expressly reserved all existing remedies for residential purchasers in RCW 64.06.070"). *Cf. Glenn*, 2008 WL 2582977 at *9 (this Court decided only that Form 17 did not modify the RESPA between buyer and seller; not that Form 17 misrepresentations could not be the basis for a misrepresentation claim).

under their front porch in the 1996 event; of the Mason County letter; and of the slope stability report. Opening Brief at 5-7; 35. The Borchelts *do not dispute* that they knew any of these material facts. The Borchelts *knew* their answers on Form 17 were inaccurate at the time they filled it out and signed it. RCW 64.06.050 does not shield them from liability.²

3. Reasonable Reliance

The trial court also dismissed any of the Jackowskis' claims for fraud and fraudulent concealment arising out of the fill and out of the property being in a known landslide area. The trial court held that the Mason County letter was notice that the property was in a landslide hazard area, and that a reasonable inspection would have discovered the fill. Presumably, had the trial court not already dismissed the claims, it would have applied the same holding to any negligent misrepresentation claims arising therefrom (as it did, to negligent misrepresentation claims against Johnson and Hawkins Poe and Conklin and Windermere). The Borchelts argue that the court correctly held that the Jackowskis did not reasonably rely on the misrepresentations.

2

The Borchelts cite to a Washington Practice section which is not binding authority on this Court as support for their argument. The passage they quote discusses the case where the seller had no knowledge of the inaccuracies on Form 17; here the Borchelts knew that their representations were false.

a. Negligent Misrepresentation

In the claim of negligent misrepresentation, the plaintiff's reliance on the false information must be justified (reasonable under the circumstances). ESCA Corp. v. KPMG Peat Marwick, 135 Wn.2d 820, 827-28, 959 P.2d 651 (1998). These are the circumstances: each Respondent owed duties to the Jackowskis entitling them to rely on the Respondents' representations, yet each Respondent made misrepresentations.

The Borchelts are sellers of real property. They owed the Jackowskis the duty of good faith and fair dealing. They also made representations in Form 17. In transactions involving real and personal property, "one to whom a positive, distinct, and definite representation has been made is entitled to rely on such representation and need not make further inquiry concerning the particular facts involved." Jeness v. Moses Lake Dev. Co., 39 Wn.2d 151, 160, 234 P.2d 865 (1951). Conklin is the sellers' agent and Johnson the buyers' agent. RCW 18.86.030(1)(b) mandates that they deal honestly and in good faith; 18.86.030(1)(d) requires that they disclose all material facts that they know; 18.86.030(1)(a) imposes the duty of exercising reasonable skill and care; and 18.86.030(1)(c) mandates that they present all written communications to and from either party in a timely fashion. Johnson, as the

buyer's agent, owed the duty of advising the Jackowskis to seek expert advice on matters he did not understand. RCW 18.86.050(1)(c).

Given the duties which each Respondent owed to the Jackowskis, the Jackowskis had a reasonable expectation that the Borchelts and Conklin would not deceive them and that Johnson would pass on all documents in a timely fashion, that he would exercise reasonable skill and care, and that he would advise them to get expert advice if he did not understand something.

Despite owing duties to the Jackowskis, the Borchelts made misrepresentations on Form 17 saying that there was no fill on the property, the property had never been subject to earth movement, there were no studies adversely affecting the property, and there were no other material defects. Conklin did not disclose his knowledge of nearby landslides and did not exercise due care, willfully closing his eyes to observable warning signs (observable to Conklin, trained to recognize signs of past landslides). The Borchelts and Conklin concealed the cracks. Johnson interpreted the Mason County letter for the Jackowskis as only concerning the revegetation bond. Johnson also failed to give the Jackowskis the slope stability report, and recommended that they hire only a home inspector and a well inspector.

Consider fill. The Borchelts misrepresented the existence of fill.

Consider the landslide hazard area. The Borchelts misrepresented that there had been no damage from earth movements on the property, and Conklin failed to disclose his knowledge about nearby landslides. Johnson interpreted the Mason County letter for the Jackowskis as only concerning the revegetation bond, and did not give them the slope stability report. The Jackowskis had the right to rely on *all* these representations.

These are the circumstances: all Respondents owed duties to the Jackowskis that gave the Jackowskis the right to rely on them. Breaching their duties, the Borchelts and Conklin made misrepresentations and concealments, and breaching his duties, Johnson behaved with such incompetence as to further muddy the truth. Under the standard for negligent misrepresentation, the reliance on the false information was justified.

b. Mason County Letter

Even if the Jackowskis did not have the right to rely on their own agent's interpretation of the Mason County letter, this letter, in these circumstances, would *not* have put a reasonable buyer on notice that the entire property was contained in a landslide hazard area. The letter is a *permit* that describes the scope of the allowed project: "Install ecology block wall that was constructed within the regulated buffer area. Restoration of

buffer is in progress on graded areas on hillside *below existing single family residence.*” CP 548 (emphasis added). Several lines down, the words “landslide hazard area” are circled. Most waterfront properties on Puget Sound have some erosion in the toe of the slope, right next to the water. This letter refers to the hillside *below existing single family residence.* A reasonable buyer would have interpreted this letter as concerning the area below the house, not above it, just as Johnson did for the Jackowskis:

This was given to me in the context of planting a bunch of plants to stop soil erosion. It talked about the area below the house, mainly that hillside where they had put a road in. I took everything on this in context of that. And why the – you know, that these were circled, saying that this property had, you know, these circled items, it wasn’t, you know, that the house was in danger. It wasn’t there was a huge problem on the thing. It was something down below that had to do with a bunch of plants.

CP 769-70. (In contrast, the Borcheltes knew that the area *above* the house was unstable; the six inches of soil that subsided out from under the porch steps were above the house. Conklin, with personal knowledge of two nearby landslides, knew that the *whole area* was unstable. Johnson, with the slope stability report, should not have so interpreted the letter).

Moreover, it is more likely than not that Johnson did not transmit the letter to the Jackowskis before the close of the inspection contingency period. First, consider the counteroffer signed on May 14:

There is also a contract with the County that we need to obtain a copy of for the buyer's review and acceptance. Subject to the buyer's satisfactory review of the documentation with the County, the buyers agree to assume the seller's position in the contract with Mason County and replace the seller's funds (\$4,400.00) with their own funds at closing.

CP 544. The plain language of the counteroffer shows that Johnson had not given the Jackowskis a copy of the Mason County letter before they signed the counteroffer. Instead, Johnson probably told the Jackowskis of the contents of the letter, either via telephone or email. Since Mr. Jackowski says that Johnson told him the letter was concerned with the revegetation bond, it is unlikely that Johnson quoted the three words, "landslide hazard area."

The facts suggest that Johnson did not give them a copy until *after* the inspection contingency period passed: the next addendum to the RESPA, which sets out the parties' rights and responsibilities with regard to the revegetation bond, is dated June 25. CP 545. The inspection contingency period ran on May 28. CP 540. Mr. Jackowski also declared, "Well after the purchase process was underway, Mr. Johnson mailed me some documents that he received from Windermere." CP 1191. In deposition, Mr. Jackowski testified that he received and read the letter before closing. He did *not* testify, as Conklin asserts, that he received and read it the day after he made an offer. Conklin Response at 5, *citing* CP 567-70, 574. Finally, the fact that Hawkins

Poe lost the emails, which could have shown when Johnson sent the letter, is spoliation of evidence, sufficient to overcome summary judgment. U.S. v. Kitsap Physician's Services, 314 F.3d 995, 1001 (9th Cir. (Wash.) 2002).

c. Fraud and Fraudulent Concealment

The reasonable reliance standard, with respect to fraudulent concealment, is that the defect would not be disclosed by a careful, reasonable inspection by the purchaser. Alejandre, 159 Wn.2d at 689. Recall the circumstances: each Respondent owed duties to the Jackowskis entitling them to rely on their representations about the property. Each Respondent made misrepresentations denying the existing of the two conditions (fill and the landslide hazard area) that the trial court said would be discovered by a reasonable inspection. Finally, Johnson recommended the inspections the Jackowskis should get: "I suggested they get a home inspection and . . . a well inspection." CP 1042. The Jackowskis followed his advice.

The question is, then: were the Jackowskis reasonable to follow their agent's advice and to get a home and well inspection when the inspection contingency addendum gave them the *option* to make additional inspections? CP 540. Yes. Since the Jackowskis had the right to rely on the Borchelts' and Conklin's representations, they had no reason to hire a soils inspector or

a geotechnical inspector when the representations *denied* fill and past soil movement. See Glenn, 2008 WL 2582977 at *9. “[The seller] made assertions regarding the roof’s history. [The buyer] relied on those representations in limiting their roof inspection.” Likewise, since Johnson owed the Jackowskis the duties of due care, transmitting all material documents, and advising the Jackowskis to get expert advice on matters he did not understand, the Jackowskis had no reason to second-guess their agent’s advice. It was *reasonable* for the Jackowskis to follow Johnson’s recommendation and to get a home and well inspection, inspections which would not have discovered fill or soil instability.

The Borchelts argue that a reasonable inspection would have discovered the fill and the landslide hazard area, citing to the deposition of Dave Strong. In fact, Mr. Strong testified that he, a *licensed engineering geologist*, would have recognized signs of instability had he inspected the property. He also testified that any other *geologist, engineering geologist, or engineer* (like Randall Thompson, to whom the Borchelts also cite) would have, too. He testified that any competent *soils inspector* would have been able to see fill. CP 141.1-42. A *home inspector*, like the one Johnson hired for the Jackowskis in reliance on the Borchelts’ and Conklin’s representations

and on Johnson's advice, would not have discovered the fill, nor yet the soil instability. According to Phil Weigand, Johnson, the *agent* (not the Jackowskis, the *clients*) should have investigated a geological survey, reviewed the Mason County building department records, and should have recommended a geotechnical engineer. CP 215; 1187. He did not.

The Borchelts also argue that the Jackowskis should have investigated their misrepresentations on Form 17; uncovered the discrepancy between the engineer's recommendation that they locate the addition on the west side and their building it on the north (Borchelt Response at 18); investigated the issue of slope stability (*id.* at 19); and obtained information "regarding the excavation and relocation of native soil that occurred during construction of the residence" (*id.* at 20). In so arguing, the Borchelts are trying to shift their statutory burden to make accurate disclosures to the Jackowskis to try to prove the truth or falsehood of their disclosures. The Jackowskis had no duty to investigate the Borchelts' representations. Jeness, 39 Wn.2d at 160.

The reasonable reliance standard for fraud is that the plaintiff has the right to rely on the representations. Stiley v. Block, 130 Wn.2d 486, 505, 925 P.2d 194 (1996). Each Respondent owed the Jackowskis duties, giving them the right to rely on all representations. *See supra* at 8.

4. Proximate Cause

The Borchelts argue that their misrepresentations and concealment were not the proximate cause of the Jackowskis' injury. They argue that because the whole property slid, rather than just the portion of the house that was built on fill, that they are not responsible. In truth, had the Borchelts made no misrepresentations and concealments, the Jackowskis would not have purchased the property and would not have been injured. Honest answers on Form 17 and the cracks in the floor would have been enough for the Jackowskis to walk away. Even if the misrepresentations were limited to the siting and construction of the addition,³ they were still the proximate cause of the injury. "If I had known that the addition was built in an unapproved location and did not rest on firm native soil I would not have purchased the property." CP 221.

Even if the question *were*: was the damage "caused by any fill or construction practices utilized on the site[?]" (Borchelt Response at 22), the argument still fails. Vince McClure declared, "there is a secondary movement of the fill around and under the addition The movement in

3

The misrepresentations were not so limited; the Borchelts also said they had never had past soil movement when they had lost six inches of soil under their front steps, uphill from the house, *before* the addition was built.

the fill mass was probably initiated by the general movement, but appears to be worse. The fill mass appears to be exacerbating the general problems caused by the main slide.” CP 355. Dave Strong declared, “It is my opinion that settlement due to construction on uncontrolled fill is a larger factor than any natural slope movement that is occurring.” CP 380.

5. Breach of Contract

After this Court’s decision in Glenn, the Jackowskis concede that Form 17 disclosures do not modify their contract with the Borchelts. 2008 WL 2582977. However, the Jackowskis may still sue the Borchelts in contract for any other false representations they made during the course of the sale, by which they promised that certain facts were as they represented them, promises incorporated into the contract as warranties. Hausken v. Hodson-Feenaughty Co., 109 Wash. 606, 611, 187 P. 319 (1920). The Borchelts concealed the cracks in the basement, equivalent to a representation that the addition had not been constructed on fill and that the property was not itself subject to slippage, a warranty they breached.

The Jackowkis may also sue them in contract for their breach of the duty of good faith and fair dealing. “There is in every contract an implied duty of good faith and fair dealing.” Badgett v. Security State Bank, 116

Wn.2d 563, 569, 807 P.2d 356 (1991). Finally, while the Borchelts argue that the implied warranties of fitness and habitability are only available in actions against builder-vendors for new construction, that is the case here. The Borchelts had the addition built, never lived in it, and finished the basement with the express purpose of selling it.

6. Attorney Fees

The Borchelts did not oppose the Jackowskis' request for fees.

F. Reply to Johnson and Hawkins Poe

1. Scope of Review

Johnson correctly notes that the court commissioner below partially denied the Jackowskis' motion to amend the complaint, specifically denying the addition of a breach of contract claim and certain statutory claims. The Jackowskis moved for revision and Johnson responded. CP 446-48; 143-47; 115-17. The trial court was scheduled to hear the motion for revision on the same day as Johnson's third motion for summary judgment, September 14. At the hearing, after holding that all claims based on the agents' breaches of statutory duties sounded in tort and were barred by Alejandre and the economic loss rule, the trial court agreed with Johnson that the motion for revision was moot. RP 9/14/07 at 47, ll. 1-4. The Jackowskis are appealing

the grant of summary judgment, including the determination that agents' breaches of duties sound only in tort and are barred by the economic loss rule; these issues are still alive. *See* Assignment of Error B, Opening Brief at 1.

2. Negligent Misrepresentation

The trial court first granted summary judgment to Johnson on the Jackowskis' claim of negligent misrepresentation on the grounds of reasonable reliance, not the economic loss rule. Johnson argues that the Jackowskis failed to prove negligent misrepresentation. Johnson Response at 28. Throughout his argument, Johnson reframes the Jackowskis' allegations: he argues as though the Jackowskis were suing him for having failed to properly inspect the property and for having made warranties about the property. These are not the issues here.

First, Johnson cites to caselaw that says that in order to overcome a motion for summary judgment on an issue for which the standard of proof is clear, cogent, and convincing evidence, that the issue of fact raised by the non-moving party must itself be supported by clear, cogent, and convincing evidence. Guntheroth v. Rodaway, 107 Wn.2d 170, 175-76, 727 P.2d 982 (1986). The Jackowskis met this burden.

They raised the following issues supported by the following facts:

whether Johnson was in possession of the slope stability document, supported by Johnson's testimony that he was, CP 1049; whether Johnson transmitted the slope stability document, supported by Mr. Jackowski's testimony that he did not, CP 1192-93, his inability to remember when he did or not, CP 1049, and Hawkins Poe's loss of all the emails, CP 1036, 993-95, 1014-15; whether Johnson transmitted the Mason County letter to the Jackowskis in a timely fashion, supported by the text of the counteroffer, signed on May 14, CP 544, the date on which the inspection contingency period passed, May 28, CP 540, the date of the last addendum to the RESPA, June 24, CP 545, and Hawkins Poe's loss of all the emails, *see supra*; how Johnson interpreted the Mason County letter, supported by Jackowski's testimony that Johnson interpreted it as concerning the revegetation bond, CP 289, and by the text of the counteroffer and the last addendum, CP 544 and 545; whether Johnson advised the Jackowskis to seek expert advice on matters beyond his understanding, supported by Johnson's testimony that he only advised the Jackowskis to get a home and a well inspection, CP 1042, and the testimony of Johnson's broker at Hawkins Poe, Steve Furst, that *he* did not understand the slope stability report that Johnson admitted possessing, CP 1004-05. All of these pieces of clear, cogent, and convincing evidence support claims that

Johnson breached his statutory duties and support claims that he negligently gave false information to the Jackowskis.

Johnson argues that he supplied no false information. In fact, Johnson interpreted the Mason County letter for the Jackowskis as solely concerning the revegetation bond. Respondents now contend that this letter was notice that the entire property, not just the beach, was in a landslide hazard area; Johnson's *interpretation* was false information.

The Borchelts made false representations on Form 17; these representations are imputed to both the buyers' and sellers' agents if the agents know of the falsity. RCW 64.06.050(2). Here, Johnson possessed the slope stability report which contradicted many of the Borchelts' falsehoods. Those false representations are therefore imputed to Johnson.

Johnson failed to pass on the slope stability report; omitting to disclose a material fact is equivalent to an assertion that the fact does not exist. Brinkerhoff v. Campbell, 99 Wn. App. 692, 698, 994 P.2d 911 (2000). Johnson's failure to pass on the report is false information.

Finally, Johnson only advised the Jackowskis to hire a home and a well inspector, despite possessing the slope stability report, the Mason County letter, and being under a duty to advise the Jackowskis to seek expert

advice on matters beyond his ken. The advice to only hire a home and well inspector was false information.

Johnson further argues that the Jackowskis did not show how he was negligent in obtaining or communicating the false information. In fact, they cited to the declarations of experts who recited how Johnson and Hawkins Poe breached their duty of care. *See* Opening Brief at 14 and 16; 31.

Johnson also argues that, first, the Jackowskis did not rely on the false information that he supplied, and second, that even if they did, they had no right to do so, pursuant to the RESPA between the Jackowskis and the Borchelts. The Jackowskis did rely on the false information:

I did arrange for a basic home inspection, and picked an inspector recommended by Mr. Johnson. . . . Mr. Johnson did not recommend that we have a geotechnical engineer inspect the property, and attended the inspection on my behalf as I was out of state. . . . [Johnson] characterized [the Mason County letter] as pertaining to a bond to do some replanting to stop soil erosion. [H]e eased my mind that these were nothing to worry about but were simply background information.

CP 1191-92. As to the RESPA, Johnson misinterprets its scope. This is not a breach of contract action under the *RESPA* against either of the agents. The RESPA – a contract between the Jackowskis and Borchelts – is not a waiver of the agents’ statutory or common law duties. This action, against Johnson, is for his breach of those duties, sounding in tort as a professional malpractice

action and in contract as an action for the breach of his duties, imported by law, that he owed the Jackowskis in their contract of agency. (This action, against Conklin, is for his breach of those duties, sounding in tort as a professional malpractice action.)

The contract of agency is the governing agreement between Johnson and the Jackowskis. Since Johnson's statutory duty to urge the Jackowskis to seek expert advice on matters he did not understand is incorporated into the contract by law, evidence of how he breached that duty – for example, his interpretation of the Mason County letter as only concerning a revegetation bond (when *now* his counsel argues that the letter was notice that the property was in a landslide hazard area) and his advice to the Jackowskis to only hire a home and well inspector – is material and relevant to the case. This evidence is not parol evidence offered to contradict the terms of the RESPA; the RESPA is not an agreement between Johnson and the Jackowskis.

Finally, Johnson argues that the Jackowskis did not reasonably rely on his false information. They did reasonably rely on his false information, both under the standard for negligent misrepresentation as well as the standard for fraud or fraudulent concealment (for which the Jackowskis are not suing Johnson). *See supra* at 8-15.

3. Alejandre and the Economic Loss Rule

The trial court next granted summary judgment to Johnson as to all the Jackowskis' other claims of breaches of statutory and common law duties, holding that the claims sounded in tort and were barred by Alejandre and the economic loss rule. Johnson argues that the trial court was correct and that Alejandre bars all the claims, which he says are only negligent misrepresentation claims, even those based on his breaches of statutory duties.

The economic loss rule does not bar the claims. It does not apply at all in this case because the Jackowskis' losses were caused by a sudden and dangerous event, the landslide (*see infra* at 30). Even if it did apply, it would not apply to professional malpractice claims (*see infra* at 29). Moreover, it would not apply to Jackowskis' claims against Johnson, even claims based on breaches of statutory duties, because such duties are imported by law into the agency contract between the agent and the client.

a. Breach of Contract Claims

Johnson admitted that he entered into a written agreement with the Jackowskis under which he would be their seller's agent. CP 1035. "It is the general rule that parties are presumed to contract with reference to existing statutes, and a statute which affects the subject matter of a contract is

incorporated into and becomes a part thereof.” Wagner v. Wagner, 95 Wn.2d 94, 98, 621 P.2d 1279 (1980) (internal citations omitted). All of the duties that Chapter RCW 18.86 imposed on Johnson were incorporated into and became a part of the contract of agency. An action by the Jackowskis against Johnson for his breaches of duty sounds in contract, as a breach of contract action, and also sounds in tort, as a professional malpractice action.

Alejandre and the economic loss rule specifically exclude actions on a contract, for a breach of contract duties, seeking contract remedies, from the rule’s operation. 159 Wn.2d 682-83. This includes statutory duties imported into the contract by law. All statutes applying to real estate agents allocate the risks in the relationship between client and agent (as well as between an agent and a person not his client; *see, e.g.*, RCW 18.86.030). For example, RCW 18.86.050(1)(c) imposed the duty on Johnson to advise the Jackowskis to seek expert advice on matters relating to the transaction that were beyond his expertise. If, as here, the client was injured by the agent’s failure to urge expert advice, the agent then bears the risk of liability for the injuries.

RCW 64.06.050(2) states that a real estate agent is not liable for the inaccuracies made by a seller in Form 17, unless the agent has actual knowledge of the inaccuracies. If the agent does not have actual knowledge,

and the seller makes a misrepresentation and the client is injured thereby, then the client bears the risk of injury as against the innocent agent. Here, Johnson possessed (but did not give to Jackowskis) the slope stability report, which contradicted many of the misrepresentations on Form 17. Those misrepresentations are imputed to him and he is liable as are the Borchelts.

Johnson argues that the Jackowskis' rights and duties vis-a-vis their own agent are set forth in the RESPA between the Jackowskis and the Borchelts, in paragraph "u." Johnson Response at 25. Paragraph "u" states commissions are due to the agents, "in accordance with any listing or commission agreement to which they are a party." CP 532. The RESPA defers that issue to the contract of agency where the Jackowskis agreed to pay Johnson a commission and he agreed to serve as their agent. It is that contract of agency into which the statutes are incorporated. Even if the RESPA were the governing document between Johnson and the Jackowskis (which it is not; Johnson is not a party to the RESPA!), it incorporates the agency contract by reference; likewise, Johnson's statutory duties would be incorporated by law into the RESPA, if indeed he were a party.

The RESPA also contains another real estate agent paragraph:

Real estate brokers and salespersons do not guarantee the value, quality or construction of the Property. . . . Real estate licensees do

not have the expertise to identify or assess defective products, materials, or conditions. Buyer is urged to retain inspectors qualified to identify the presence of defective materials and evaluate the condition of the property.

CP 532, paragraph “w.” However much Johnson would like to hang his hat on that paragraph, the fact is that the paragraph does not abrogate any of Johnson’s statutory duties that were incorporated into the contract of agency and for the breach of which he is being sued, like the *duty to advise the Jackowskis to seek expert advice on matters Johnson did not understand*. Nor does the Inspection Addendum at CP 540.

Johnson also argues that any suit on a breach of an agent’s duties under Chapter RCW 18.86 is necessarily for negligent misrepresentation. While many of Johnson’s breaches of his statutory duties do sound in negligent misrepresentation, that is not the only place they sound. Since Johnson and the Jackowskis are in a contractual agency relationship, Johnson’s statutory duties are incorporated into the contract of agency. His breaches of statutory duties are breaches of contract. Moreover, courts often allow an agent’s breach of his statutory duties to be the basis for suits for causes of action other than negligent misrepresentation. *See, e.g., Bloor*, 143 Wn. App. at 736 (Consumer Protection Act violation) and *Preview Properties, Inc. v. Landis*, 161 Wn.2d 383, 386, 165 P.3d 1 (2007) (Consumer

Protection Act violation and “*violation of duties imposed under the real estate licensing statutes*” (emphasis added)). Johnson is incorrect in stating, “Washington courts do not treat a breach of a broker’s duty as a separate claim for damages, over and above the negligent misrepresentation claim.” *Cf.* Johnson Response at 43 with Preview Properties, 161 Wn.2d at 386.

Johnson correctly notes that Chapter RCW 18.86 limited, rather than expanded, the liability of real estate professionals. His interpretation of the limitation, however, goes too far. For example, Johnson quotes RCW 18.86.110, “This chapter supersedes only the duties of the parties under the common law, including fiduciary duties of an agent to a principal, to the extent inconsistent with this chapter.” Johnson Response at 42. Johnson interprets this as meaning that “Real estate professionals no longer owe fiduciary duties.” *Id.* This is not what the statute says. The statute continues: “The common law continues to apply to the parties in all other respects.” RCW 18.86.110. Johnson also ignored the fact that the Jackowskis cited specific statutory duties that he breached and detailed the way in which breached them. These claims of breaches of statutory duties, imported into the contract by law, are not barred by Alejandre.

b. Professional Malpractice Claims

In fact, even claims of negligent misrepresentation against a real estate agent – against both Johnson and Conklin – are not barred by Alejandre and the economic loss rule, because they are professional malpractice claims. Professionals, like real estate agents and like attorneys, owe duties to their clients and to non-clients.⁴ These duties are both statutory and common-law, and while they are imported by law into any contractual relationship between professional and client, are non-negotiable. Neither a real estate agent nor an attorney can contractually abnegate the duty of due care, for example. As such, these duties are not those “assumed only by agreement,” and a suit in tort for the breach of these duties is not barred by the economic loss rule. *See Alejandre*, 159 Wn.2d at 682.

Furthermore, while these duties owed by the professionals do allocate risk between the professional and the client, the parties themselves had *no opportunity* to allocate the risk, because the duties are non-negotiable! When there is no opportunity to allocate risk, the economic loss rule does not apply. *Id.* at 687. Therefore, the economic loss rule does not apply to claims of

4

Real estate agents owe duties to both parties to the transaction, RCW 18.86.030(1); attorneys owe duties to certain non-clients, Trask v. Butler, 123 Wn.2d 835, 842-43, 872 P.2d 1080 (1994)

professional malpractice, even claims based on the professional's negligent misrepresentations by a client in contractual privity with the professional.

c. Sudden and Dangerous Event

Johnson argues that the Jackowskis' damages were fixed as of the day of purchase, not as of the date of the landslide. This argument is irrelevant; it may become relevant if the Jackowskis prevail here and below. As to the damages themselves, Johnson argues that they were economic losses only, citing to Stuart v. Coldwell Banker Commercial Group, Inc. saying that construction defects are economic losses only and to Glenn, saying that damage to one component part of a house is damage to the house itself. Response at 27, *citing* 109 Wn.2d 406, 745 P.2d 1284 (1987) and 2008 WL 2582977.

In fact, the Stuart court performed exactly the same inquiry that the Jackowskis urge on this Court: "in cases such as the present one where only the defective product is damaged, the court should identify whether the particular injury amounts to economic loss or physical damage." 109 Wn.2d at 420. The Stuart court answered, "The 'injury' or damage suffered was that the decks themselves deteriorated, not through accident or violent occurrence, but through exposure to the weather." *Id.* at 421. Here, the house *collapsed*

in a violent occurrence, a sudden and dangerous event: the landslide.⁵ The plaintiff in Glenn argued that the leaky roof caused property damage to the walls and floors, to “property other than the defective product or property.”

2008 WL 2582977 at *5. The Jackowskis have never tried to force a distinction between injury to part and injury to whole. *See* Opening Brief at 20. Glenn is inapplicable to the Jackowskis’ injury. Instead, this Court should engage in the inquiry mandated by the Stuart court.

4. Right to a Jury Trial

Johnson argues that the trial court was correct in striking the Jackowskis’ jury demand, because the Jackowskis had one equitable claim, rescission, against one set of defendants, the Borchelts. Johnson erred in stating that “[i]f one of the main issues in an action is equitable, equity takes jurisdiction for all purposes, and there is no right to trial by jury.” Johnson

5

Johnson complains that the Jackowskis’ counsel violated ER 411 in asking why the real estate agents’ insurance policies, which indemnify against the agents’ errors and admissions that were causes of Jackowskis’ injuries, should not answer for the catastrophic loss damages. ER 411 does not admit evidence of liability insurance on the issue of whether the person acted negligently or wrongfully. It is admissible when offered for another purpose. Here, the Jackowskis posed the question for the purpose of arguing that the policy reasons for the economic loss rule do not exist where, as here, the injury was caused by a sudden, dangerous event, but that the policy reasons that keep tort law alive exist here in spades. Opening Brief at 21-22.

Response at 48. The authority he cites all preceded the enactment of CR 38 and 39, two civil rules that greatly increased the discretion of the trial court.⁶ Coleman v. Highland Lumber, Inc., 46 Wn.2d 549, 283 P.2d 123 (1955); Ranta v. German, 1 Wn. App. 104, 459 P.2d 961 (1969); Trautman, Right to Jury Trial in Washington: Present and Future, 34 Wash. L. Rev. 401 (1959).

In Scavenius v. Manchester Port Dist., this Court construed CR 38 and 39 as vesting wide discretion in the trial court, in cases involving both legal and equitable issues, to allow a jury on *some, none, or all* issues presented. 2 Wn. App. 126, 129, 467 P.2d 372 (1970) (emphasis added). The Supreme Court explicitly adopted this Court's reasoning in Scavenius. Brown v. Safeway Stores, Inc., 94 Wn.2d 359, 367, 617 P.2d 704 (1980).

What is important here is that as to Hawkins Poe and Johnson and Windermere and Conklin, the Jackowskis have no equitable claims, only legal ones. The right to a jury trial for legal issues is an important one. "Article I, § 21, of the constitution of this state provides that the right of trial

6

The only authority Johnson cites for this proposition that post-dates the adoption of CR 38 and 39 is Knudsen v. Patton, 26 Wn. App. 134, 137-38, 611 P.2d 1354 (1980). He erroneously cites to that portion of the opinion where the court discusses Professor Trautman's article as having preceded CR 38 and 39 and the Scavenius v. Manchester Port Dist. holding, that is, to a portion of the opinion that discusses the law as it *was*, not as it *is*.

by jury shall remain inviolate. This is a valuable right, jealously guarded by the courts.” Watkins v. Siler Logging Co., 9 Wn.2d 703, 710, 116 P.2d 315 (1941); Const. Art. I, § 21. Because the right to trial by jury is so important, it is crucial that the trial court give “great weight” to the constitutional right of trial by jury; “if the nature of the action is doubtful, a jury trial should be allowed.” Brown, 94 Wn.2d at 368; Scavenius, 2 Wn. App. at 129. Since the Jackowskis made *only* legal claims against the real estate agents and agencies, and had only one equitable claim against the Borchelts, the trial court erred in striking their jury demand.

G. Reply to Conklin and Windermere

As to Conklin and Windermere, the trial court dismissed on summary judgment any claims about Conklin’s failure to disclose his knowledge of landslides on other nearby properties, any claims arising out of landslides on the subject property, and any claims arising out of the presence of fill, on the issue of reasonable reliance. The trial court did not dismiss the Jackowskis’ claims against Conklin and Windermere for fraudulent concealment of the floor cracks, for which refusal to dismiss they filed a cross-appeal.

1. The Cross-Appeal

In his Response, Conklin assigned no error and made no arguments

relating to his cross-appeal.

2. Reasonable Reliance

The trial court held that the Jackowskis did not reasonably rely on Conklin's misrepresentations. These include his failure to disclose his knowledge of nearby landslides, his failure to disclose the existence of the cracks (which he was also complicit in concealing), his failure to exercise due care and observe the warning signs visible to *him* that indicated the property was in an area subject to earth movement, and his failure to disclose that any of the Borchelts' representations on Form 17 were false (which, owing to his knowledge of nearby landslides and his training, he should have recognized). Omitting to disclose a material fact is equivalent to an assertion that the fact does not exist. Brinkerhoff, 99 Wn. App. at 698. Each of Conklin's failures to disclose are misrepresentations. Given the duties which each set of Respondents owed to the Jackowskis, their reliance on Conklin's misrepresentations was reasonable, both under the standard for negligent misrepresentation as well as for fraudulent concealment and fraud. *See supra* at 8-15.

Conklin further argues that the Jackowskis, even if they reasonably relied on *all* Respondents' misrepresentations, were *negligent* in doing so, pointing to the their receipt of the Mason County letter. The Mason County

letter would not have put a reasonable buyer on notice that the entire property was located in a landslide hazard area, especially a reasonable buyer like the Jackowskis, who were the victims of misrepresentations and incompetence by the time they received the letter. *See supra* at 10-13. They were not negligent in relying on Respondents' misrepresentations. Even if they were, any "negligence" would serve only to reduce recovery under Washington's comparative fault regime, not to bar recovery altogether.

Conklin cites to ESCA Corp. v. KPMG Peat Marwick for the proposition that the recipient of a negligent misrepresentation is barred from recovery for pecuniary loss suffered in reliance upon it if he is negligent in so relying. Conklin Response at 13, *citing ESCA*, 135 Wn.2d 820, 826, 959 P.2d 651 (1998). *This is bad law*. The passage cited is where the Court is discussing § 552A of the Second Restatement of Torts, not adopting it as law. The ESCA Court goes on to say, "This case does not require us to decide whether a plaintiff's negligence in relying on the negligent misrepresentation acts as a bar to recovery because the jury concluded the reliance was justified." 135 Wn.2d at 830. While the Court did not reach the issue in ESCA, it did so a few years later in Lawyers Title Ins. Co. v. Baik, 147 Wn.2d 536, 55 P.3d 619 (2002).

We believe that, where a plaintiff reasonably reposes some trust in a misrepresentation and shows that that reliance proximately caused some damages, the automatic preclusion of a negligent misrepresentation claim on the grounds that the plaintiff could have done something more would be the sort of “harsh result” that the comparative fault statute [RCW 4.22.005] sought to forestall in tort claims. Thus, we hereby reject the applicability of section 552A to negligent misrepresentation claims and reaffirm our determinations in ESCA that *reliance is justifiable if it is reasonable under the circumstances*.

Id. at 551 (internal citations omitted, emphasis added). The Jackowskis have shown that their reliance was reasonable under the circumstances: they were the victims of misrepresentations and incompetence practiced on them by the very people who owed duties *entitling* them to reliance. Even if Conklin could show negligence, that would only reduce a recovery, not bar the claim.

Conklin also makes the argument that he and his agency are not at fault for Johnson’s interpretation of the Mason County letter. Conklin Response at 14. On the contrary, had Conklin disclosed his knowledge of nearby landslides, exercised due care by not willfully donning blinders to observable warning signs (observable to Conklin, experienced in slope stability issues on waterfront properties), and had he – instead of being complicit in concealing the cracks in the basement floor – actually disclosed the cracks, Johnson would have been on notice that something was wrong with the property. He might have interpreted the Mason County letter

differently and might have urged the Jackowskis to get a soils inspection.

Even if Johnson's incompetence was such that he would have acted exactly the same way – interpreting the Mason County landscaping letter as solely concerning a revegetation bond and only advising a home and well inspection – then the Jackowskis themselves would still have the benefit of honest disclosures from Conklin as to the cracks and the past neighborhood landslides and would not have bought the property:

I did not see the extensive cracks in the basement floor when I viewed the property prior to purchase because there was carpeting installed over the entire floor. If the floor had not been carpeted and I had seen the structural cracks described by my experts, I would not have purchased the property.

CP 221. Conklin's misrepresentations and concealment were one of the proximate causes of the Jackowskis' injuries.

Conklin argues that Johnson's failure to pass on the slope stability report to the Jackowskis is immaterial, since the defect that the slope stability report warned of – the fact that the entire property was in a landslide hazard area – is the same one that all Respondents now contend the Mason County letter was sufficient notice of. A reasonable buyer in the Jackowskis' circumstances would not have been put on notice by the Mason County letter. *See supra* at 10-13. In fact, had Johnson actually transmitted the slope

stability report, then the Mason County letter might have – despite Johnson’s interpretation thereof – become *meaningful* to the Jackowskis, rather than *meaningless*. Likewise, had Conklin not made his own misrepresentations and engaged in concealment, the Jackowskis would not have bought the property, regardless of Johnson’s failure to transmit and his misinterpretation.

3. Floor Cracks

Conklin also argues that since the trial court allowed the Jackowskis to pursue their claim of fraudulent concealment against him and his agency for the floor cracks, that the issue is immaterial to this appeal. On the contrary, Conklin had filed a cross-appeal on that very issue. Second, Conklin’s complicity in concealing the floor cracks and his failure to disclose the existence of the cracks is not only the basis for the Jackowskis’ fraudulent concealment claim, but also one of the bases for their claim of negligent misrepresentation, sounding in tort as a professional malpractice claim. *See supra* at 29. The floor cracks are evidence of fill and past soil movement, and hiding the floor cracks served to hide the fill and soil movement as well. The trial court erred in reframing the Jackowkis’ factual allegations regarding Conklin’s complicity in concealing and failure to disclose the floor cracks as being solely related to their fraudulent concealment claim.

III. CONCLUSION

By and large, Respondents have not quarreled with the Jackowskis' legal arguments: that the collapse of the house was a sudden, dangerous event more properly remediable in tort, that the economic loss rule does not bar claims for rescission, that an agent's statutory and common law duties are incorporated by law into the contract of agency, and that the economic loss rule does not bar claims of professional malpractice, even those based on an agent's negligent misrepresentations. Nor have Respondents disputed the Jackowskis' factual allegations as to Respondents' knowledge of material facts, their misrepresentations, or their concealments. The Jackowskis' legal arguments are good ones, full of merit. This Court should overrule the trial court and should clarify the meaning of Alejandre and the economic loss rule.

Instead, Respondents have concentrated their efforts on arguing that the Jackowskis' reliance on their misrepresentations and concealments was unreasonable. The Jackowskis were blindsided by the twin forces of misrepresentation and incompetence – inflicted on them by the very people who owed them common law and statutory duties entitling them to reliance. Under these circumstances, it was entirely reasonable for the Jackowskis to rely on all Respondents' misrepresentations. It was reasonable under the

standard for negligent misrepresentation, under the standard for fraudulent concealment, and under the standard for fraud. This Court should overrule the trial court's holding that the Jackowskis did not have the right to rely on the Respondents' misrepresentations.

Respectfully Submitted this 8th day of August, 2008.

CUSHMAN LAW OFFICES, P.S.

Stephanie M. R. Bird
Stephanie M. R. Bird, WSBA #36859
Attorney for Jackowskis

COURT OF APPEALS
DIVISION II

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OFFICE

Mary Kuchno certifies and declares as follows:

1. I am a legal assistant at Cushman Law Offices, P.S. I am over the age of 18, and not a party to this action.

2. On August 8, 2008, I sent via ABC Legal Messengers, for same business day delivery/filing, Jackowskis' Opening Brief to:

Court of Appeals, Division II
950 Broadway, Suite 300
Tacoma, WA 98402

3. On August 8, 2008, I sent via e-mail and via ABC Legal Messengers for next business delivery, a copy of the above-described document to:

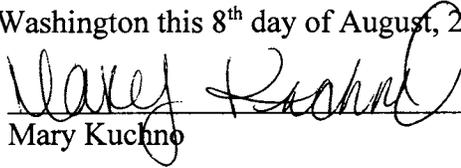
Melanie A. Leary
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Jeffrey P. Downer
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3. On August 8, 2008, I sent via e-mail and via U.S. Mail, first class postage prepaid, a true and correct copy of the same document to the following attorney for Respondents Borchelt:

Robert W. Johnson
Attorney at Law
P. O. Box 1400
Shelton, WA 98584

DATED at Olympia, Washington this 8th day of August, 2008.


Mary Kuchno

*accepted by
Court order 8/22/08*

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NO. 36944-3-II

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

TIMOTHY L. JACKOWSKI and ERI JACKOWSKI, husband and wife,

Appellants

DAVID BORCHELT and ROBIN BORCHELT, husband and wife, HAWKINS POE, INC. dba COLDWELL BANKER HAWKINS-POE REALTORS, HIMLIE REALTY INC and VINCE HIMLIE, Broker for WINDERMERE HIMLIE REAL ESTATE, real estate brokers, and ROBERT JOHNSON and JEF CONKLIN, real estate agents,

Respondents

**APPELLANTS' ADDENDUM AND CORRECTION
TO REPLY BRIEF**

Appellants Tim and Eri Jackowski respectfully request that this Court accept this Addendum and Correction to their Reply Brief. Their Counsel erred in stating that Respondents Jef Conklin and Windermere had filed a cross-appeal on the issue of the floor cracks. In fact, Respondents David and Robin Borchelt had sought discretionary review on the issue of the floor cracks, review that was denied on February 8, 2008, in a ruling by Commissioner Eric B. Schmidt.

Counsel apologizes for her error and requests that this Court and all Respondents ignore any references in the Reply Brief to any cross-appeal.

Respectfully Submitted this 19th day of August, 2008.

CUSHMAN LAW OFFICES, P.S.


Stephanie M. R. Bird, WSBA # 36859
Attorney for Appellants

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BY _____
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CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the State of Washington, that on August 14th, 2008, I caused to be served a true copy of the foregoing by the method indicated below, and addressed to each of the following:

original:

Court of Appeals	<input checked="" type="checkbox"/>	U.S. Mail, Postage Prepaid
Division II	<input type="checkbox"/>	Legal Messenger
949 Market Street	<input type="checkbox"/>	Overnight Mail
Tacoma, WA 98402	<input checked="" type="checkbox"/>	Facsimile

copy:

Melanie A. Leary	<input checked="" type="checkbox"/>	U.S. Mail, Postage Prepaid
Demco Law Firm, P.S.	<input type="checkbox"/>	Legal Messenger
5224 Wilson Ave. S.	<input type="checkbox"/>	Overnight Mail
Suite 200	<input checked="" type="checkbox"/>	Facsimile
Seattle, WA 98118		

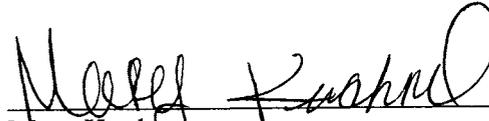
Robert W. Johnson	<input checked="" type="checkbox"/>	U.S. Mail, Postage Prepaid
Settle & Johnson, P.C.	<input type="checkbox"/>	Legal Messenger
P.O. Box 1400	<input type="checkbox"/>	Overnight Mail
Shelton, WA 98584	<input checked="" type="checkbox"/>	Facsimile

Jeffrey P. Downer	<input checked="" type="checkbox"/>	U.S. Mail, Postage Prepaid
Lee Smart P.S., Inc.	<input type="checkbox"/>	Legal Messenger

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Signed this 4th day of August, 2008, in Olympia, Washington.



Mary Kuchno
Legal Assistant