FILED
COURT OF APPEALS
DIVISION II
2016 AUG 1 AM 10: 03
STATE OF WASHINGTON
BY AP
DEPUTY

NO. 48685-7-II

COURT OF APPEALS, DIVISION II

OF THE STATE OF WASHINGTON

CHRISTINA R. BRAGG, Appellant,

v.

IQ CREDIT UNION, Respondent.

APPELLANT'S BRIEF

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TABLE OF CONTENTS

I. STATEMENT OF THE CASE.....1

II. ASSIGNMENTS OF ERROR.....3

III. ISSUE STATEMENTS.....3

IV. FACTS.....3

V. ANALYSIS.....5

A. The Trial Court erred by granting Respondent's Motion for Summary Judgment on Appellant's Wrongful Termination Claims.....5

1. The Trial Court erred in finding that Appellant failed to establish a clear mandate of public policy.....7
2. The Trial Court erred in finding that Appellant failed to explain how Respondent's conduct jeopardized public policy.....9

VI. CONCLUSION.....11

TABLE OF AUTHORITIES

CASES

Atherton Condo Apartment Owerns Ass'n Bd. of Dirs v. Blume Dev. Co., 115 Wn.2d 506, 799 P.2d 250 (1990).....6

Balise v. Underwood, 62 Wn.2d 195, 381 P.2d 966 (1963).....6

Bennett v. Hardy, 113 Wn.2d 912, 784 P.2d 1258 (1990).....10

Briggs v. Nova Servs., 166 Wn.2d 794, 213 P.3d 910 (2009).....5

Clements v. Travelers Indemnity Company, 121 Wn.2d 243, 850 P.2d 1298 (1993).....6

Dicomes v. State, 113 Wn.2d 612, 782 P.2d 1002 (1989).....9,10

Farnam v. CRISTA Ministries, 116 Wn.2d 659, 807 P.2d 830 (1991).....10

Harless v. First Nat'l Bank, 162 W. VA. 116, 246 S.E.2d 270 (W. VA. 1978).....8

Hill v. Carroll County, Miss, 587 F3d.230, 233 (5th Cir. 2009).....6

Hubbard v. Spokane County, 146 Wn.2d 699, 50 P.3d 602 (2002).....6

Marshall v. Thurston County, 165 Wn. App. 346, 267 P.3d 491 (Div.2 2001).....6

Quest Corp v. City of Bellevue, 161 Wn.2d 353, 166 P.3d 667 (2007).....5

Ranger Ins. Co v. Pierce County, 164 Wn.2d 545, 192 P.3d 886 (2008).....6

Rickman v. Premera Blue Cross, 184 Wash. 2d 300, 358 P.3d 1153 (2015).....10

Robert v. Dudley, 140 Wash. 2d 58, 993 P.2d 901, 903 (2000).....7,8

Sea-Pac Co. V. United Food & Commercial Workers Local Union 44, 103 Wn.2d 800, 699 P.2d 217 (1985).....7

Smith v. Bates Tech. Coll., 139 Wash. 2d. 793, 991 P.2d 1135 (2000).....7

Thompson v. St. Regis Paper Co., 102 Wn.2d 219, 685 P.2d 1081 (1984).....7

Wilson v. Steinbach, 98 Wn.2d 434, 656 P.2d 1030 (1982).....6,7

STATUES

Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. 2601 et. seq.....1,5,8,9

Reg X 1024.7 of RESPA (Reg X), 12 CFR Part 102.....1,4,5,9

RULES

CR 56(c).....7

I. STATEMENT OF THE CASE

Christina Bragg (hereinafter "Ms. Bragg") had worked at IQ since December 2013 as Vice President of Mortgage Services at IQ Credit Union ("IQ") in its mortgage and home loan department. CP, 1.

On or around July 24th, 2014, Jared Hall, an IQ Sales Manager, provided a GFE to a borrower on a home mortgage loan. CP, 2. The GFE did not disclose the mandatory mortgage insurance required of the borrower as required by Reg X of RESPA. CP, 2. IQ discovered this mistake when the loan application was going through underwriting. CP, 2. Normally, when a mortgage lender makes this type of mistake, they would have to pay for the mistake because the regulations do not allow for the mortgage lender to change the GFE when it would negatively affect the borrower. CP, 28-29.

Nevertheless, IQ did not want to take a loss and decided, against the regulations, to revise the GFE and provide the revised GFE to the borrower. CP, 28 . Ms. Bragg did not believe that IQ could legally take this action and notified her supervisor of her concerns. CP, 28. She also notified IQ's legal counsel, who notified her that according to Reg X 1024.7(f), she was correct and that from a legal standpoint, IQ should not revise and reissue the GFE because this would be against the law. CP, 28. Reg X 1024.7(f) provides, in pertinent part, that loan originator is bound

to settlement charges and terms listed in the GFE within specific tolerances or specific instances where revision is allowed. CP, 29.

Moreover, Reg X 1024(f) states in pertinent part, mistakes or errors in the GFE do not constitute a change in circumstances. CP, 29. Any errors in disclosure not within the stated tolerances are to be cured by the loan originator and not charged to the borrower. CP, 29. Reg X 1024.7 was promulgated to ensure the real estate buyers understand the nature of the transactions they are involved in and they cannot be surprised with hidden fees at the close of the deal. CP, 29.

IQ wrongfully terminated Ms. Bragg on August 19, 2014. CP, 2.

Ms. Bragg filed a Complaint against IQ to recover fair compensation for IQ's retaliation and wrongful termination. CP, 1.

IQ filed a Motion for Summary Judgment that was granted on February 11, 2016. CP, 35. The summary judgment motion prevented Ms. Bragg from pursuing a legitimate wrongful termination and breach of contract case. CP, 13, 35.

Ms. Bragg asks this Court to vacate the Order granting Respondent's Motion for Summary Judgment so that Ms. Bragg can pursue her claims against IQ.

II. ASSIGNMENTS OF ERROR

1. The Trial Court erred by granting Respondent's motion for summary judgment on Appellant's wrongful termination claim.

III. ISSUE STATEMENTS

1. The Trial Court erred as a matter of law by granting Respondent's motion for summary judgment because Appellant did establish a clear mandate of public policy. (Assignment of Error No. 1).

2. The Trial Court erred as a matter of law in granting Respondent's summary judgment motion because Appellant did establish that Respondent's conduct jeopardized public policy. (Assignment of Error No.1).

IV. FACTS

Ms. Bragg was the former Vice President of Mortgage Services at IQ and has been employed with IQ since December 13, 2013 and was terminated on August 19, 2014. CP, 1. On or around July 24, 2014, Jared Hull, an IQ Mortgage Sales Manager provided a Good Faith Estimate (GFE) to a borrower on a home mortgage loan. CP, 2. The GFE failed to disclose the mandatory mortgage insurance. CP, 2.

On or around August 5, 2014, while the loan was going through underwriting, it was discovered the loan to value percentages required

mortgage insurance, thereby changing the settlement charges reflected on the GFE. CP, 2. Mortgage insurance would cost approximately $5,000. CP, 2. IQ did not want to take this as a loss, and instructed a revised GFE to be issued to the borrower. CP, 2. Ms. Bragg did not believe this was statutorily allowed and stated that she did not feel comfortable with this instruction. CP, 2. She further consulted NW Compliance Group, IQ's own legal counsel and she was again instructed that revising and reissuing the GFE would be against statutory regulation. CP, 2.

Despite the legal opinion from IQ's legal counsel, IQ decided to violate the regulation, take the business risk and re-issue the GFE. CP, 2. Ms. Bragg refused to violate the Federal regulation and instructed her staff not to violate the statutory regulation. CP, 28.

Ms. Bragg was terminated for insubordination on August 19, 2014 for refusing to violate Reg X 1024.7(f), which requires that the loan originator be bound to the settlement charges and terms listed in the GFE within specific tolerances or specific instances where revision is allowed. CP, 2. Reg X 1024(f) states in pertinent part, revisions are allowed if there is a change of circumstances, borrower-requested changes, expiration, or interest rates changes. CP, 29. Mistake or error in the GFE does not constitute a change in circumstances. Any errors in disclosure not within the stated tolerances are to be cured by the loan originator and not

charged to the borrower. CP, 29.

Reg X 1024.7 was promulgated to ensure that real estate buyers understand the nature of the transactions they are involved in and they cannot be surprised with hidden fees at the close of the deal. CP, 29. The actions that IQ ordered Ms. Bragg to engage in would have violated the Real Estate Settlement and Procedures Act ("RESPA"). CP, 3.

Ms. Bragg filed suit on or around October 15, 2015. CP, 1. Respondent filed a Motion for summary judgment on or around November 25, 2015. CP, 13. Ms. Bragg filed a response on or around January 25, 2016. CP, 27. The parties appeared for a hearing on the Motion on January 22, 2016. CP, 35. The Judge granted respondent's Motion for summary judgment on or around February 11, 2016. CP, 35.

Ms. Bragg timely filed a notice of appeal on or around March 2, 2016. CP, 38.

V. ANALYSIS

A. The standard for summary judgment

Summary judgment is appropriate, where, viewing all admissible facts and reasonable inferences most favorably to the nonmoving party, the court finds no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Briggs v. Nova Servs.*, 166 Wn. 2d

794, 801, 213 P.3d 910 (2009); *Quest Corp. v. City of Bellevue*, 161 Wn2d 353, 358, 166 P.3d 667 (2007) (citing *Hubbard v. Spokane County*, 146 Wn.2d 699, 707, 50 P.3d 602 (2002). A genuine issue of material fact exists where "reasonable minds could differ on the facts controlling the outcome of the litigation." *Ranger Ins. CO. v. Pierce County*, 164 Wn.2d 545, 552, 192 P.3d 886 (2008). "A material fact is one upon which the outcome of litigation depends in whole or in part." *Marshall v. Thurston County*, 165 Wn. App. 346, 267 P.3d 491 (Div.2 2011) (citing *Atherton Condo Apartment Owerns Ass'n Bd. of Dirs v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990)).

The moving party's burden is to show that no material fact remains. *Balise v. Underwood*, 62 Wn.2d 195, 199, 381 P.2d 966 (1963). No genuine issue of material fact exists where a party fails to make a showing sufficient to establish the existence of an element essential to that party's cases, and on which that party will bear the burden of proof at trial. *See Hill v. Carroll County, Miss*, 587 F3d. 230, 233 (5th Cir. 2009). All facts submitted and all reasonable inferences from them are to be considered in the light most favorable to the nonmoving party. *Clements,* 121 Wn.2d at 249. "The motion should be granted only if, from all the evidence, reasonable persons could reach but one conclusion." *Clements v. Travelers Indem. Co.,* 121 Wn.2d at 243 (1993) (citing *Wilson v.*

Steinbach, 98 Wn.2d 434, 656 P.2d 1030 (1982)). Here, as discussed below, there are significant facts the preclude granting summary judgment in this matter.

An appeal from an order of summary judgment requires the Court to view the facts of record in the light most favorable to the nonmoving party. CR 56(c); *Sea-Pac Co. v. United Food & Commercial Workers Local Union 44*, 103 Wn.2d 800, 801, 699 P.2d 217 (1985). Because Respondent brought the motion, the Court should review the record in the light most favorable to the Appellant. *Robert v. Dudley*, 140 Wash. 2d 58, 60, 993 P.2d 901, 903 (2000).

1. The Trial Court erred as a matter of law by granting Respondent's motion for summary judgment because Appellant did establish a clear mandate of public policy.

In *Thompson v. St. Regis Paper Co.*, 102 Wn.2d 219, 685 P.2d 1081 (1984), Washington Courts joined a growing number of jurisdictions by recognizing a cause of action in tort for wrongful discharge in violation of public policy. *Smith v. Bates Tech. Coll.,* 139 Wash. 2d 793, 800-01, 991 P.2d 1135, 1139-40 (2000). "The policy underlying the exception is that the common law doctrine cannot be used to shield an employer's action which otherwise frustrates a clear manifestation of public policy." *Id.* The Court explained that "the exception has been utilized in instances

where application of the terminable at will doctrine would have led to a result clearly inconsistent with a stated public policy and the community interest it advances." *Id.* As an example of the type of case where the public policy exception is appropriate, the Court sited the West Virginia case entitled *Harless v. First Nat'l Bank*, 162 W. Va. 116, 246 S.E.2d 270 (W. Va. 1978). *Id.* In this case, a bank employee was discharged after attempting to make his employer comply with the state consumer credit and protection laws. *Id.* The West Virginia Supreme Court held that despite the general rule, the bank could be liable for wrongful discharge because the discharge would otherwise frustrate a clear manifestation of public policy, protection of consumers of credit. *Id.* This case is almost identical to *Harless*. The Appellant in this case was discharged after attempting to make her employer comply with RESPA.

Despite this fact, the Trial Court granted summary judgment on Respondent's wrongful discharge claim on the basis that there was no genuine issue of material fact in regards to whether a clear mandate of public policy was violated. In determining whether a clear mandate of public policy is violated, courts should inquire whether the employer's conduct contravenes the letter or purpose of a constitutional, statutory, or regulatory provision or scheme. *See Roberts*, *supra* at 63 -65, 904 – 05. The Court elaborated on the meaning of a clearly mandated public policy

in *Dicomes,* stating "In general, it can be said that public policy concerns what is right and just and what affects the citizens of the State collectively. . . . Although there is no precise line of demarcation dividing matters that are the subject of public policies from matters purely personal, a survey of cases in other States involving retaliatory discharges shows that a matter must strike at the heart of a citizen's social rights, duties, and responsibilities before the tort will be allowed." *Dicomes v. State*, 113 Wn.2d 612, 782 P.2d 1002 (1989). Here, Appellant states such a policy. The RESPA Act provides, in pertinent part, Reg X 1024.7 was promulgated to ensure that real estate buyers understand the nature of the transactions they are involved in and they cannot be surprised with hidden fees at the close of the deal. Here, Appellant alleges her termination violated public policy in that she was seeking to protect the very same consumers that the RESPA Act was seeking to protect under Reg. X 1024.7. Accordingly, viewing all facts in favor of the Appellant, the summary judgment should be denied.

2. The Trial Court erred as a matter of law in granting Respondent's summary judgment motion because Appellant did establish that Respondent's conduct jeopardized public policy.

The Trial Court found that there was not a genuine issue of material fact regarding whether Appellant establish that Respondent's

conduct jeopardized public policy. A plaintiff establishes the jeopardy prong by demonstrating either of the following: "his or her conduct was ... [(1)] directly related to the public policy *or* [(2)] necessary for effective enforcement." *Rickman v. Premera Blue Cross*, 184 Wash. 2d 300, 311, 358 P.3d 1153, 1159 (2015). The reasonableness of the plaintiff's conduct relates to whether the plaintiff's conduct furthers public policy goals. *Id.* This inquiry may be satisfied by showing "the employee sought to further the public good, and not merely private or proprietary interests." *Id.*; *Dicomes, supra* at 620, 1008; *compare Bennett v. Hardy*, 113 Wn.2d 912, 924-25, 784 P.2d 1258 (1990) (allowing a claim when the employee hired an attorney to protect herself from discrimination, an act for which she was later fired), *with Farnam v. CRISTA Ministries*, 116 Wn.2d 659, 672, 807 P.2d 830 (1991) (finding the employee did not seek to further the public good because she knew the employer's conduct did not violate the law). *Rickman*, *supra* at 311, 1159. In *Rickman*, the Court found that the plaintiff had established that defendant's conduct jeopardized public policy when *Rickman* presented evidence that she believed her employers actions violated a clear mandate of public policy. *Id.* *Rickman* reported her concerns to her supervisors and her supervisors told her to disregard her concerns. *Id.* When the Court viewed the facts of this case in the light

most favorable to the nonmoving party, they found that Rickman did not act unreasonably or raise concerns to benefit her private or proprietary interest. *Id.* In this case, Ms. Bragg did not act any differently than Rickman. Ms. Bragg presented evidence that she believed that her employer's actions were in violation of a clear mandate of public policy, she reported that conduct to her supervisors and her supervisors told her to disregard her concerns. Accordingly, viewing the facts of the case in a light most favorable to the Ms. Bragg, the Court should vacate the summary judgment motion granted by the Trial Court.

VI. CONCLUSION

For the foregoing reasons, the Appellant asks that this Court vacate the Trial Court's order granting summary judgment and remand for entry of an order denying the Respondent's Motion for Summary Judgment.

Respectfully submitted this 19th day of July 2016.

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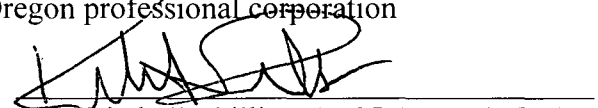
an Oregon professional corporation

By: 

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CERTIFICATE OF SERVICE

I certify that on July 29th 2016, I served the foregoing APPELLANT'S BRIEF on the following person(s) on the date indicated below:

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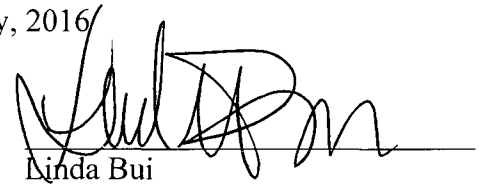
by the following indicated method(s):

X by faxing full, true and correct copies thereof to said attorney to the fax number noted above, which is the last known fax number for said attorney, on the date set forth below.

X by mailing full, true, and correct copy thereof in a sealed, first class postage pre-paid envelope, addressed to the attorney/parties shown above at the last known address, by first class mail on the date set forth below:

DATED this 29th day of July, 2016

By: 
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Re: 48685-7-II/Bragg, Appellant v. IQ Credit Union, Respondent

Dear Mr. Ponzoha:

Enclosed please find one (1) original of Appellant's Brief and one (1) copy in the above-referenced matter.

Also enclosed, please find a check for $200.00 as payment for the sanction.

Please contact me at 1-888-335-0161 Ext 701, if you should have further questions.

Thank you.

Sincerely,

Linda Bui
Legal Assistant for
Ken Mitchell-Phillips

Encls.
cc. Rochelle Y. Nelson
Nicholas M. Beermann