

FILED

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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

WASHINGTON STATE COURT OF APPEALS
FOR THE DIVISION III

NO. 306348-III

FRANCES CLARK and SHANNON HOERNER-CLARK,
Husband and wife,

Appellants,

V.

JR'S QUALITY CARS, INC., VIROJ "LEE" RITDECHA, salesperson,
and CAPITOL INDEMNITY CORP.,

Respondents.

APPELLANT'S REPLY BRIEF

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A. ARGUMENT

1. Capitol's bond is liable for violations of RCW 46.70.

By the plain language of the statute, a vehicle dealer's surety bond covers *any* loss resulting from violations of RCW 46.70 et Seq. RCW 46.70.070(1)(c) ("[A]ny retail purchaser . . . who has suffered any loss or damage by reason of any act by a dealer which constitutes a violation of this chapter shall have the right to . . . recovery against . . . the surety upon such bond."). Respondents inaccurately represent that *Joint Admin. Board v. Fallon* ("*Fallon*") is applicable to Capitol's bond in the present case. Respondents suggest that the court in *Fallon* deferred to the language of the bond to determine the *scope* of liability. *Joint Admin. Board v. Fallon*, 89 Wn. 2d 90, 94, 569 P.2d 1144, 1147 (1977). Nevertheless, in *Fallon*, there was no question as to whether the violation was within the scope of the bond. *Id.* To the contrary, and distinguishable from the case at hand, the issue in *Fallon* was whether the surety bond became *effective* after a suspected statutory condition was satisfied, or whether the bond's language was determinative regarding the date of effectiveness. *Id.* The court in *Fallon* held that the statute (RCW 18.27) did not impose such a condition and *only then* did the court turn to the issue of whether the surety bond was *effective at the time* of the violation based on the language within that bond. *Id.* at 95, 569 P.2d 1147.

Thus, contrary to Respondents' representations, the *Fallon* court *did not* hold that the language within a surety bond is operative when determining scope. *Id.* Respondents attempt to distract the court by shifting the focus of the issue to whether Capitol's bond enumerated a breach of contract claim as a violation, instead of properly addressing whether the *statute* encompasses breach of contract as a violation that the bond is *statutorily required* to cover.

2. The Act provides relief for breach of contract where such breach gives rise to a violation of RCW 46.70.

Respondents correctly acknowledge that "a breach of contract may give rise to a violation of RCW 46.70 (and thus a claim against the bond)." Capitol's Responsive Brief at p. 5. In the present case, the developments leading up to a breach of contract certainly give rise to such a violation under the chapter. RCW 46.70.180(2)(a)(i) (It is a violation of the chapter "to incorporate into the purchase and sale . . . agreement any statement or representation . . . which is false, deceptive, or misleading"). However, Respondents erroneously assume that this court's ruling (establishing that the second contract was invalid and that the first contract was breached) indicates an absence of false, misleading, or deceptive practices. This court did not find that JR's did not violate any provisions of RCW 46.70. CP 34-45. While it is true that the trial court did not find false, misleading,

or deceptive practices on the part of JR's, this determination was based on the conclusion that the second contract was valid, and, therefore, the first contract could not have been breached. CP 4-5. Respondent's fail to acknowledge that the basic premise upon which the trial court made its (now overturned) findings was put into question when this court determined that the second contract was invalid, leaving the issue of false, deceptive, and misleading practices unanswered.

B. CONCLUSION

Appellants respectfully ask the court to reverse the January 6, 2012, judgment and find Respondent Capitol liable as a result of JR's violation of RCW 46.70 by breach of contract. Appellants also ask this court to award reasonable attorney's fees as permitted under RCW 46.70.070. *See Wells v. Aetna Ins. Co.*, 60 Wn. 2d 880, 883, 376 P. 2d 644, 646 (1962) (holding that part of the damages allowable under RCW 46.70.070 is reasonable attorney's fees).

Dated this 17th day of September, 2012.

UNIVERSITY LEGAL ASSISTANCE

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COURT OF APPEALS, DIVISION III OF THE STATE OF WASHINGTON

FRANCIS CLARK and SHANNON HOERNER-CLARK, husband and wife,)	Court of Appeals Case No: 306348-III
)	
Appellants,)	
v.)	DECLARATION OF MAILING
)	
J.R.'S QUALITY CARS, INC., and CAPITOL INDEMNITY CORP.,)	
)	
Respondents.)	

I, Jillian A. Cook, declare that I am a citizen of the United States and not a party to this action; that on the 17th day of September, 2012, I mailed a full, true and correct copy of Appellant's Reply Brief by depositing said envelope in The United States Mail with sufficient postage affixed to:

Mr. Alexander A Friedrich
Yusen & Friedrich
215 NE 40th St., Ste. C-3
Seattle, WA 98105

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

SIGNED at Spokane, Washington, on the 17th day of September, 2012.



Jillian A. Cook