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Washington State Supreme Court

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No. 91393-5

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

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Washington State Supreme Court

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Ronald R. Carpenter
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CERTIFICATION FROM
THE UNITED STATES DISTRICT COURT
FOR
THE WESTERN DISTRICT OF WASHINGTON

SANDRA C. THORNELL, on behalf of herself and all others similarly
situated,

Plaintiffs,

v.

SEATTLE SERV. BUREAU, INC. d/b/a/ NATIONAL SERV. BUREAU,
INC. and STATE FARM MUT. AUTO INS. CO.,

Defendant.

BRIEF OF *AMICUS CURIAE*
THE ASSOCIATION OF WASHINGTON BUSINESS

Robert A. Battles, WSBA No. 22163
ASSOCIATION OF
WASHINGTON BUSINESS
1414 Cherry Street SE
Olympia, WA 98507
Telephone: (360) 943-1600



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I. INTRODUCTION

The Association of Washington Business (AWB) is concerned about the attempt by the plaintiff in this matter to apply The Washington Consumer Protection Act (CPA) to the alleged actions done by the defendants outside of the state of Washington. To allow an out-of-state plaintiff who has no significant connection to Washington State could result in a system where plaintiffs forum shop for what they believe to be the most advantageous laws. If a plaintiff does not need to have a geographic connection with the state to apply a law from that state, then a plaintiff can apply any law, regardless of jurisdiction, to their case in order to win.

Laws are enacted by state and local jurisdictions to provide certainty for all parties in their particular jurisdiction. The legislative process is designed to allow the citizens of that jurisdiction to participate and comment on the proposed laws. The state and local elected officials are accountable to the will of the people, so if citizens do not like the laws they can vote out the legislators. It has long been understood that if a business or individual enters a particular jurisdiction they can rely on the laws of that jurisdiction to apply to their activities while doing business in the area. If the business or individual does not like the laws in a particular

jurisdiction, they can work to change them or choose not to do business in the jurisdiction.

In this case, the plaintiff would have this Court turn this basic understanding of jurisdiction upside down. The plaintiff wants this Court to apply the Washington CPA to actions in Texas, because the Texas law does not allow a cause of action in Texas. Allowing this to happen will result in a chilling effect on business in Washington State. Businesses would not know which law may apply because a plaintiff can pick and choose any law that works best for them, regardless of their geographical location.

The CPA does not support this outcome. The AWB requests this Court to find that the CPA does not create a cause for a plaintiff residing outside Washington to sue for allegedly deceptive acts in another state.

II. IDENTITY AND INTEREST OF AMICI CURIAE

The Association of Washington Business (“AWB”) is Washington State’s Chamber of Commerce and principal representative of the state’s business community. AWB is the state’s oldest and largest general business membership federation, representing the interests of approximately 8,000 Washington companies who, in turn, employ over

700,000 employees, approximately one-quarter of the state's workforce. AWB members are located in all areas of Washington, represent a broad array of industries, and range from sole proprietors and very small employers to the large, recognizable, Washington-based corporations which do business across the country and around the world. AWB members include all types of employers that conduct business both in and out of state. Our members rely on the consistent application of laws in every jurisdiction. AWB members have a vested interest in the outcome of this matter.

III. ISSUES OF CONCERN TO *AMICUS CURIAE*

This Brief of *Amicus Curiae* addresses the questions certified to this Court from the United States District Court for the Western District of Washington:

1. Does a Washington Consumer Protection Act create a cause of action for a plaintiff residing outside Washington to sue a Washington corporate defendant for allegedly deceptive acts?
2. Does the Washington Consumer Protection Act create a cause of action for an out-of-state plaintiff to sue an out-of-state defendant for allegedly deceptive acts of its in-state agent?

The plaintiffs are asking for the Court to apply Washington CPA to alleged actions that took place in Texas. In order to do this the Court would have to ignore the plain language of the CPA and create a private right of action with no basis in the statute. If you ignore the geographic requirements of the law, then jurisdiction will no longer be relevant. Not only will this increase the possibility of plaintiff forum shopping, it will likely result in businesses choosing to no longer locate in Washington State rather than be exposed to an out of state plaintiff, who can choose to use laws from any jurisdiction that favors them.

AWB respectfully states that the answer to both the certified questions must be “no.”

IV. STATEMENT OF THE CASE

AWB adopts and joins in the Statement of the Case in the Brief of Defendant State Farm Mutual Automobile Insurance Company.

V. ARGUMENT

The Consumer Protection Act Does Not Create a Cause of Action for Plaintiffs residing outside Washington

When analyzing a statute, this Court has always looked first to the plain meaning of the statute. The legislature is presumed to know what it

was doing when it enacted the law. *Lake v. Woodcreek Homeowners Ass'n*, 169 Wn.2d 516, 526 (2010). The court will not read into a law any legislative intent if the law makes sense on its face.

In the case of the CPA that law on its face is clear. It applies only in Washington State. RCW 19.86.020 state that the purpose of the CPA is to stop “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce” The statute defines trade and commerce to “include the sale of assets or services, and any commerce directly or indirectly affecting the people of the state of Washington.” RCW 19.86.010(2). Further as stated in the statute, even potential out of state defendants are subject to the statute only “if such person has engaged in conduct in violation of this chapter which has had the impact in this state....” RCW 19.86.160.

The CPA was intended to apply to activity in the state. To apply it to a Washington State business’ alleged activity out of state ignores the statute’s clear language. To attempt to apply the CPA to a plaintiff who is located in Texas-and who only acted in Texas- opens the floodgates for every court to apply any law to any action, regardless of jurisdiction.

This Court has held that a private right of action under the CPA is no greater than the right for the Washington Attorney General to bring an

action under the CPA. *Indoor Billboard/Wn., Inc. v. Integra Telecom of Wn., Inc.*, 162 Wn.2d 59, 74 (2007). The private cause of action must have a public interest. The intent of the act is to protect the citizens of Washington.

The only reason that the Texas plaintiff is seeking to apply the Washington CPA is because Texas does not provide a cause of action for the plaintiff. The Texas legislature, for whatever reason, decided to not provide the same CPA protections to its citizens that the Washington Legislature provided. This is not to say one law is better or worse, just different. The citizens of Texas can seek to change their law should they wish to adopt a similar consumer protection act to the Washington CPA. That is their right through the legislative process. They cannot just passively absorb Washington CPA protections because they prefer them.

This Court has recognized that when a conflict between jurisdictions exists, it is the plaintiff's home state law that applies. In this case the home state is Texas, the state where the plaintiff resides and where the alleged deceptive activity occurred. To now apply the Washington CPA to a Texas plaintiff would actually undermine what the Texas Legislature decided through its own legislative process and go against this earlier determination.

Businesses and individuals rely on continuity in the law. It creates a level playing field for all parties involved. If a business or individual does not like the law, they can seek to have it changed or decide to not do business in the particular jurisdiction. To do what the plaintiff is seeking in this matter would break such continuity and have a negative impact on business in Washington. Therefore, this Court should not allow individual plaintiffs to pick and choose which jurisdiction's laws they want to have applied in any particular case.

Businesses need to be able to rely on a particular jurisdiction's laws. If this is undermined, then, a business in Washington would have to assume that any law may potentially apply to their business, regardless of what jurisdiction enacted the law. As long as a plaintiff can somehow show the slightest bit of connection to the law, no matter how irrelevant, they would be able to say geographical borders do not apply.

Local jurisdictions, such as cities and counties, will also be affected by this ruling. One city could enact laws that force citizens of another city to comply with their law. This creates a patchwork of laws that result in businesses being forced to deal with daily uncertainty. If the uncertainty becomes too great the result is loss of business and ultimately loss of jobs.

VI. CONCLUSION

For the reasons stated above, AWB urges this Court to refrain from creating an entirely new obligation for Washington employers that is not called for by the Washington CPA. To do so would be contrary to the plain clear language of the CPA. Both certified questions should be answered “no.”

DATED this 4th day of September, 2015.

THE ASSOCIATION OF WASHINGTON
BUSINESS

By 

Robert A. Battles WSBA No. 22163
General Counsel
The Association of Washington Business

OFFICE RECEPTIONIST, CLERK

To: Bob A. Battles
Cc: jkauffman@baileyglasser.com; mmurphy@baileyglasser.com; bterrell@tmdwlaw.com; TFrederi@winston.com; NMurphy@winston.com; LCoberly@winston.com; jhampton@bpmlaw.com; dsyhre@bpmlaw.com; hasson@dhlaw.biz
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ROBERT (BOB) A. BATTLES
ASSOCIATION OF WASHINGTON BUSINESS
General Counsel and Government Affairs Director

T 360.943.1600 / M 360.870.2914
T 800.521.9325 / F 360.943.5811
PO Box 658, Olympia, WA 98507-0658
www.awb.org

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Dear Clerk:

Please find attached for filing in the above-referenced matter, electronic copies of the following documents:

- Motion for Leave to file Memorandum of Amicus Curiae of AWB
- Memorandum of Amicus Curiae of AWB
- Declaration of Service

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ROBERT (BOB) A. BATTLES
ASSOCIATION OF WASHINGTON BUSINESS
General Counsel and Government Affairs Director

T 360.943.1600 / M 360.870.2914
T 800.521.9325 / F 360.943.5811
PO Box 658, Olympia, WA 98507-0658
www.awb.org

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