

70525-3

70525-3

No. 70525-3 I

COURT OF APPEALS, DIVISION ONE  
OF THE STATE OF WASHINGTON

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NORWOOD GLEN CONDO ASSOC.

Plaintiff,

v.

LINCOLN and JUDITH DAVID

Defendant, 3<sup>rd</sup> Party,  
Plaintiff/  
Appellant

v.

RICHARD NORD, GENE BRYSON and GEORGEAN MADDY.  
3<sup>rd</sup> Party Defendants/  
Respondents.

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BRIEF OF RESPONDENTS GENE BRYSON AND GEORGEAN  
MADDY

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## **I. INTRODUCTION**

This is Respondent Gene Bryson (“Bryson”) and Georgean Maddy’s (“Maddy”) Response Brief in opposition to Appellant’s appeal in this matter. Reading the brief of Appellants Lincoln and Judith David (“David”), one could easily get the idea that Bryson and Georgean Maddy represented David in some capacity and that Bryson and Maddy made multiple interpretations of the restrictive covenant in question in this matter. However, these broad allegations are unsupported by the facts in this case and merely an attempt to create liability where there is none.

David does not dispute that (1) Bryson never spoke with David until after closing; (2) Maddy did not exercise legal discretion by merely conveying information from Richard Nord (“Nord”) to David; (3) the single statement from Maddy was a pre-offer statement to David and his broker; (4) David later made his own independent interpretation of the statute; (5) the contract and Public Offering Statement (“POS”) advised David to seek legal counsel for review of the POS restriction in question; and (6) that David failed to seek advice as advised in his contract and the POS.

## **II. ASSIGNMENTS OF ERROR**

Respondents Eugene Bryson and Georgean Maddy assign no error to the trial court’s Orders Granting Defendants Motion for Summary Judgment.

**III. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENT  
OF ERROR**

1. Has appellant provided any evidence of Bryson providing brokerage services necessary to sustain their claims against Bryson? No.
2. Did the trial court correctly dismiss the negligence and consumer protection act claims against Bryson and Maddy? Yes.
3. Did the trial court correctly dismiss the negligence based consumer protection act claims against Bryson and Maddy? Yes.
4. Did the trial court correctly rule that Maddy did not commit the unauthorized practice of law? Yes.
5. Was Maddy's conveyance of information, pursuant to RCW 18.86.030, the unauthorized practice of law? No.
6. Did David provide the court with valid authority to support his unauthorized practice of law claims? No.
7. Did Maddy owe a duty to advise David to seek independent legal counsel? No.
8. Did Maddy violate RPC 1.8 and 1.10? No.
9. Did the trial court correctly dismiss the CPA claim based upon the unlawful practice of law? Yes.

#### **IV. STATEMENT OF THE CASE**

This appeal arises from a real estate transaction in which David was represented by Brad Jessup, who was not a party to the lawsuit, in their purchase of a condominium in the Norwood Glen Condominium (“Norwood Glen”) located at 910 Medical Center Drive, Unit D-201, Arlington, Washington (“subject property”) from developer Nord Northwest Corporation (“NNC”) which is owned and controlled by Third Party Defendant Nord. Nord hired Windermere Real Estate/Arlington, Inc. and its broker Maddy to act as the seller’s broker for all units within Norwood Glen. Bryson is the designated broker and owner of Windermere Real Estate/Arlington, Inc. Bryson did not provide brokerage services or have direct interaction with David during the transaction.

David alleges claims against Maddy and Bryson for Indemnification, Fraudulent or Negligent Misrepresentation, Unauthorized Practice of Law, and Violation of the Consumer Protection Act. CP 553-555. In August, 2010, Maddy and Bryson successfully moved for summary judgment of all claims except, “the consumer protection act claim based on the unauthorized practice of law”. CP 318-320. On May 10, 2013, Maddy and Bryson successfully moved for summary judgment dismissal of the remaining consumer protection act claim based upon the

unauthorized practice of law. CP 6-8. David's cross motion for summary judgment was denied as was their motion for reconsideration. CP 9-11, 14-16.

The sole issue in this appeal stems from Nord's interpretation (at the time of this transaction) that the following recorded restrictive covenant, located in the Public Offering Statement ("POS"), allowed up to 20% of the condominium units to have children reside in them:

"17.1 Use of Project. The project is intended to be and shall only be operated as "Housing for Older Persons" pursuant to the Federal Fair Housing Act Amendments of 1988, 42 U.S.C. §3607(b)(2)(C) and implementing regulations thereof and as further defined in the Arlington code Chapter 20.90 Part II School Impact Fees. This Development must have at least eighty percent (80%) of its occupied Units inhabited by at least one person 55 years or older."

CP 446.

The POS also contained a Question and Answer section addressing the age restriction:

**HOW DOES THIS CONDOMINIUM COMPLY WITH THE HOUSING FOR OLDER PERSONS ACT?**

This project is intended to be and shall only be operated as "Housing for Older Persons"... This development must have at least eighty percent of its occupied Units inhabited by at least one person 55 years or older. See Article 17, Restrictive Covenants of the Declaration for further details.

CP 408.

Nord advised all brokers, including Maddy, that up to twenty (20) percent of the units could be sold to people under the age of 55 and that if they were under the age of 55 they would have to pay an Arlington School District Impact Fee. CP 208; *See* § IV(2)(a), *infra*. When David inquired about the restriction, Maddy conveyed the interpretation provided by her client Nord and NNW.

The superior court entered an order finding that David received the recorded declaration and covenant, that it was incorporated into the parties' purchase and sale agreement ("PSA"), and that the covenant does not allow for any children to reside at the condominium. CP 506.

**1. David failed to present any evidence in support of claims against Bryson.**

Bryson is the designated broker and owner of Windermere Real Estate/Arlington, Inc. Bryson did not provide brokerage services or have direct interaction with David during the transaction. Bryson was not involved in the transaction until after closing when David became aware of the age restriction issues. David submitted no evidence to support his claims against Bryson. David has acknowledged that Bryson was not present at the single meeting where Maddy conveyed information regarding the restrictive covenant from NNC and Nord to David:

- A. Yes. So I – called Mr. Jessup, and he set up a meeting with myself and him and Ms. Maddy at the condominiums the following day.
- Q. One sec. And was Mr. Bryson present at that meeting?
- A. No, he was not.

CP 197.

This was the sole time that David inquired about any age restriction issues prior to closing. The summary judgment briefing previously filed by David is consistent with the testimony of David:

2. But for Maddy's legal advice, Davids (sic) would not have purchased.

A second critical fact is undisputed: that the Third Party Plaintiffs David would not have purchased the Condominium but for Georgean Maddy's legal advice as to the application of the statute and restrictive covenant which was confirmed by her broker.

CP 304.

**2. David failed to prove fraudulent or negligent misrepresentation.**

**a. Maddy provided pre-offer information from her client to David.**

In early 2007, David discovered Norwood Glen and received information on the project from Jessup. There is no dispute that David reviewed information on the project, and had a meeting with Jessup and Maddy to discuss questions over the restrictive covenants. At the meeting Maddy conveyed the same information regarding covenant 17.1 that had been provided by Nord, namely that up to 20% of the units were allowed to have children.

- Q. As part of the discussion with Mr. David about the federal Fair Housing Act, did you tell him that 20 percent of the Norwood Glen Condominium project could be occupied with persons with children under the age of 18?
- A. That was my understanding at the time, yes.
- Q. And that was based on...?
- A. Based on what we were basically – how we were to represent it basically based upon what Mr. Nord had told us.
- Q. Now, did you ever talk to Mr. Nord personally...about this 20 percent rule?
- A. Basically, we asked him many times to clarify that. We basically -- we wanted to make sure that we were correct when we started the project: Twenty percent could be sold to people under 55; if they had children, they pay a school mitigation fee. That was what we were told. That's what we represented.
- Q. Okay. Were you told this personally by Mr. Nord?
- A. Yes.
- Q. Okay. And this would have occurred prior to Mr. David purchasing –
- A. Yes.

CP 205-206.

The pre offer meeting between Maddy, Jessup, and David was the only time that Maddy spoke with David on the issue. CP 208-209.

All brokers, including Maddy, had been advised of the interpretation by David at sales meetings and were instructed that if a family with children purchased a unit they would have to pay Arlington School District a school impact fee. CP 208. Consistent with this a separate restrictive Arlington School District covenant, that expressly contemplated unit owners with children having to pay the school impact fee, was executed by NNC and a part of the POS. CP 218-224.

David does not dispute that Maddy was merely conveying information from Nord to him as a prospective buyer and argued in its summary judgment motion:

“The critical issue of fact before the court is undisputed Byrson (sic) and Maddy, based on the information provided by Nord, advised the Davids that they would be able to rent the condo to renters who were under the age of 55 based on the interpretation of the covenant and the housing statute.”

CP 302.

This information was conveyed to David before he elected to write an offer on the subject property.

**b. David agreed that he was not relying upon pre-offer information/representations conveyed from by Maddy.**

Despite David’s allegations, against Maddy, David repeatedly executed documentation that act as a bar to his claims. David instructed his agent, Jessup to prepare a written offer to purchase the subject property from NNW. CP 230-242. The offer contained clear and concise language that serve as a bar to the claims of David. First, David presented a contact where he acknowledged that the written terms of the transaction superseded any prior representation, including the age restriction covenant information, conveyed pre-offer by Maddy.

**INTEGRATION. This Agreement constitutes the entire understanding between the parties and supersedes all prior or contemporaneous understandings and representations. No**

modification of this agreement shall be effective unless agreed in writing and signed by Buyer and Seller.

CP 228. This conclusively defeats the David's allegations that they relied on any oral representations to the contrary. *See* § V(2)(d), *infra*.

Second, a separate PSA addendum, the Windermere Additional Clauses Addendum ("WACA Addendum") reiterated David's understanding that Maddy was not responsible for representations not in the PSA.

**COMPLETE AGREEMENT.** Buyer and Seller agree that all representations and understandings are contained in this written Agreement, and agree that Buyer, Seller, and Agent shall not be responsible for any representations or agreements that are not contained in this written Agreement, including flyers, advertising, and listing information.

CP 236.

Third, David again acknowledged that Maddy made no contractual promises or representations outside of the PSA by executing a Form 29 New Construction Addendum.

**REPRESENTATIONS.** There are no other express or implied agreements, promises or representations except as set forth herein, or in the Public Offering Statement, or in another written document executed by the Buyer and Seller. Buyer and all agents acknowledge that no agent...has authority to make, or has made, any agreement, promise or representation on behalf of Seller.

CP 240. David read, understood the legal affect and signed every single contract provision set forth above:

- Q. So it's safe to say from the numerous paragraphs in this purchase and sale agreement that you understood that there were no outside representations that were a part of this agreement?
- A. Correct.
- Q. And so the purchase and sale agreement contains the terms of the deal?
- A. Contain – say again?
- Q. Contains the terms of your deal?
- A. Correct.

CP 200.

Having understood the above referenced contract provisions David failed to instruct his own broker to insert contract language that reflected his understanding.

- Q. Okay. At any time, did you ask your agent, Mr. Jessup, to insert language in here that addressed representations had been made to you outside of this agreement?
- A. No, I did not.
- Q. At any time, did you ask Mr. Jessup to include any language regarding the interpretation of the statute in this agreement?
- A. No, I did not...

CP 199.

Despite having executed multiple documents and acknowledging that David was not relying upon the single pre-offer statement from Maddy, David ignores the legal effect of the documents and hangs his claims on allegations of the unlawful practice of law.

Fourth, as set forth immediately below, David **bought the subject property contingent on their review and approval of the POS for the**

**subject property.** That fact is fatal to the David's fraudulent/negligent misrepresentation claim and CPA claims because it shows that David was to rely upon their review of the POS, not on Maddy, to determine the effect of the restrictive covenant in the POS. *See* § V(2)(3), *infra*.

Moreover, had David exercised due diligence and exercised their full contractual rights of an attorney review as advised, an attorney would have revealed the true meaning of the restrictive covenant on which they now sue, which likewise defeats their misrepresentation claims. *See id.*

**c. David had the contractual right to hire an attorney to review the POS during their POS review contingency and they failed to do so.**

The PSA provided David a seven day review period, after mutual acceptance, to review the POS documents and terminate the transaction if David so wished. CP 229. The POS notice page clearly advised David to have an attorney review the covenant documents and again advised David that he could not rely upon any oral representations.

**A PURCHASER MAY NOT RELY ON ANY REPRESENTATION OR EXPRESS WARRANTY UNLESS IT IS CONTAINED IN THIS PUBLIC OFFERING STATEMENT OR MADE IN WRITING SIGNED BY THE DECLARANT OR BY ANY PERSON IDENTIFIED IN THE PUBLIC OFFERING STATEMENT AS THE DECLARANT'S AGENT. And,**

**"...THE CONDOMINIUM DOCUMENTS ARE COMPLEX, CONTAIN OTHER IMPORTANT INFORMATION AND CREATE BINDING LEGAL OBLIGATIONS. YOU**

**SHOULD CONSIDER SEEKING THE ASSISTANCE OF  
LEGAL COUNSEL.”**

CP 213 (Underline Emphasis Added). David failed to exercise his due diligence, failed to have an attorney review the POS documents, and failed to request that Jessup draft an addendum confirming the representation of Nord regarding the effect of the age restriction covenant and accepted the covenants.

- Q. ...And after reviewing the bold statement, did you at any time ask for Mr. Jessup to add an addendum or any other party that would address the representation that had been made to you?
- A. No. The documentation supported the statements they made.

CP 201.

- Q. That's not what I'm asking. I'm asking once you entered into this agreement - - it states, Buyer shall be conclusively deemed to have approved it, unless within seven days following receipt, you give notice of disapproval. Once you entered into this contract, did you give disapproval to anyone?
- A. After that seven days?
- Q. Correct. Well, once you had mutual acceptance; once the buyer – excuse me, the seller accepted your offer.
- A. No, I did not.
- Q. So then you understood that under paragraph “v”, you would be deemed to have approved the public offering statement, correct?
- A. That is correct.

CP 198.

Rather than seek the advice of a qualified attorney, David reviewed the documents himself and made an independent interpretation regarding the meaning of the restrictive statute in question.

- Q. And what was your interpretation of that, that statement?  
A. There was no age limit on the other 20 percent, which verified what Ms. Maddy told me.

CP 202. This admission is fatal to David and defeats the proximate cause element to prove the claims asserted against Maddy and Bryson.

**3. The trial court correctly dismissed David's Consumer Protection Act and Unlawful Practice of Law claims against Bryson and Maddy.**

Based upon the above-described transaction documentation and testimony of David, Bryson and Maddy moved for and were granted summary judgment on the Consumer Protection Act and Unlawful Practice of Law claims. Again, a single pre-offer statement is the sole basis for such claims. The conveyance of information is not a violation of RCW 2.48.180, Unlawful Practice of Law. *See* § V(4)(a), *infra*. Further, the conveyance of information from a seller to another party by a broker is expressly authorized by RCW 18.86.030. *See* § V(5)(b), *infra*.

**V. ARGUMENT**

- 1. The trial court correctly dismissed all claims against Bryson.**
- a. David had the burden of providing evidence to support his allegations against Bryson.**

As managing broker, Bryson's sole obligations are licensing obligations under RCW 18.85 to supervise the activities of the firm's licensees. The law has long been clear that violations of RCW 18.85 cannot give rise to a private cause of action. The Court of Appeals, Div. I, squarely addressed this issue in *Woodhouse. v. Re/Max Northwest Realtors*, 75 Wn. App. 312, 878 P.2d 464 (1994), where a brokerage was sued based upon their responsibility for the conduct of a salesperson, by stating "We hold that nothing in RCW 18.85 establishes a private cause of action for damages..." and that "Woodhouses cannot rely on the disciplinary provisions of RCW 18.85 to seek recovery from RE/Max of the money they lost to its employee." *Id.*, at 316-317.

As a matter of law, all claims against Bryson must fail. The summary judgment order granting dismissal and its findings that (1) Bryson did not provide real estate brokerage services to David and (2) that there is no basis for a private cause of action or evidence to support David's claims against Bryson should be affirmed because David has no evidence to support allegations of Bryson providing brokerage services. CP 104-106.

David failed to provide the court with any evidence in support of his claims against Bryson. David's appellate briefing makes it clear that

his allegations are based upon information concerning the covenant which was passed along by Maddy. The only reason Bryson was named in the lawsuit was because he was the designated broker of Maddy. However, as discussed above, the duties of a designated broker are regulatory and cannot give rise to a private cause of action.

David acknowledges that Bryson was not involved in the pre-offer meeting with David or the transaction until a post-closing meeting where in a declaration he stated: “Bryson was surprised to discover this (no children allowed) and told both myself and Mr. Nord at the meeting that he had no idea the project wouldn’t allow children”. CP 197, 289.

**2. The trial court correctly dismissed the fraudulent/negligent misrepresentation claims against Maddy and Bryson.**

**a. David’s constructive knowledge of the age restriction prior to making an offer is a bar to their negligence claims.**

When an instrument involving real property is properly recorded, it becomes notice to all the world of its contents. *Strong v. Clark*, 56 Wn.2d 230, 352 P.2d 183 (1960). Assuming an instrument is properly indexed and recorded, subsequent owners are charged with notice of the entire contents of the instrument—of everything discoverable by inspection of the full instrument in the record book. *Thompson v. Thompson*, 1 Wn. App. 196, 460 P.2d 679 (1969); 18 WAPRAC § 14.8. If a restriction is

recorded, any subsequent purchaser is assumed to have constructive notice. *Pioneer Sand & Gravel Co. v. Seattle Constr. & Dry Dock Co.*, 102 Wash. 608, 619, 173 P. 508 (1918); *Murphy v. City of Seattle*, 32 Wash. App. 386, 392, 647 P.2d 540 (1982). Finally, if a person exercising reasonable care could have known a fact, he or she is deemed to have had knowledge of that fact. *Noyes v. Parsons*, 104 Wash. 594, 599-600, 177 P. 651 (1919); *Black's Law Dictionary* 876 (8th ed. 2004) (defining constructive knowledge).

David initialed the POS checklist which indicated that they received the controlling documents, the controlling documents were recorded and David, who through his Answer admitted that the "covenants say what they say," does not dispute the language in the documents. CP 405 and CP 590. David's situation is analogous to the facts of *Denaxas v. Sandstone Court of Bellevue, L.L.C.*, 148 Wash.2d 654, 63 P.3d 125 (2003). In *Denaxas*, a purchaser of a lot in Bellevue sued the seller because the square footage of the property, a legal representation, was not as represented in the parties' purchase and sale agreement. The Supreme Court declined to grant relief to the buyer because the buyer and the buyer's real estate agent had constructive knowledge of the actual square footage prior to closing. *Id.* at 667. The Supreme Court pointed to the preliminary title report, a survey obtained by the buyer's agent, and the escrow instructions signed by the

buyer at closing stating that the buyer approved of the legal description in finding that the buyer had constructive knowledge of the actual square footage. *Id.*

In finding for the seller, the Supreme Court stated:

Purchaser had ample opportunity to read the survey, title reports, and closing documents. Had Purchaser exercised reasonable care, it could have known their contents. Purchaser is charged with that knowledge. Therefore, we reverse the Court of Appeals and **hold that Purchaser is charged with knowledge** of not only the correct square footage but also the correct legal description of the Denaxas property.

*Id.* (emphasis added).

Like the buyer in *Denaxas*, David had ample opportunity to read the recorded Public Offering Statement documents, including the governing declaration and restrictive covenants that clearly spelled out the age use restriction and clearly advised purchaser's to seek the advice of legal counsel. The POS explicitly stated in BOLD:

**“...THE CONDOMINIUM DOCUMENTS ARE COMPLEX, CONTAIN OTHER IMPROTANT INFORMATION AND CREATE BINDING LEGAL OBLIGATIONS. YOU SHOULD CONSIDER SEEKING THE ASSISTANCE OF LEGAL COUNSEL.”**

CP 213.

In addition, David's review of the POS was a contingency and David had the contractual right to terminate the transaction. CP 229. Had

David exercised reasonable care in reviewing the documents and sought the assistance of legal counsel, as advised by the documents, they would have had actual knowledge of the existence of the age restriction prior to closing. David is charged with constructive knowledge of the age restriction since it was a matter of public record and because they had ample opportunity to exercised reasonable care and seek legal counsel prior to closing. *Denaxas*, at 667. Such constructive knowledge is a bar to David's negligence claims and summary judgment should be affirmed on this alone.

**b. David had the burden of proving fraudulent/negligent misrepresentations by clear, cogent, and convincing evidence.**

A plaintiff claiming negligent misrepresentation must prove by clear, cogent, and convincing evidence that (1) the defendant supplied information for the guidance of others in their business transactions that was false, (2) the defendant knew or should have known that the information was supplied to guide the plaintiff in his business transactions, (3) the defendant was negligent in obtaining or communicating false information, (4) the plaintiff relied on the false information, (5) the plaintiff's reliance was reasonable, and (6) the false information proximately caused the plaintiff damage.

*Ross v. Kirner*, 162 Wn.2d 493, 499, 172 P.3d 701 (2007). When a party has the burden of providing a claim by clear, cogent, and convincing evidence and the claim is reviewed on summary judgment, the party having that burden must present clear, cogent, and convincing evidence of

the claim in response to the summary judgment motion. *See Guntheroth v. Roadway*, 107 Wn.2d 170, 175-176, 727 P.2d 982 (1986) (therein defamation). Here, summary judgment was properly granted because David lacked clear, cogent, and convincing evidence that Maddy was negligent in obtaining or communicating false information, that David's reliance on a pre-contract statement was reasonable and that the single conveyance of information from Maddy to David proximately caused their damage.

**c. Maddy was not negligent in obtaining or communicating false information.**

Despite the number of arguments made in David's brief, it fails to cite to the record to substantiate that Maddy acted in a negligent manner – that Maddy violated that standard of care of a reasonably prudent real estate professional. David's allegations that the conduct was the unauthorized practice of law are addressed *infra* at § V(4) and (5). That omission is fatal to their claims against Maddy. Expert testimony is required in a professional-liability claim against a real estate broker. *Hoffman v. Connall*, 108 Wn.2d 69, 736 P.2d 242 (1987). Real estate brokers should be judged on professional standards no different than those applicable to other professionals. *Id.*, at 75. Whenever a plaintiff alleges professional liability, the claim must be supported by expert testimony of

the professional peer of the defendant. *McKee v. American Home Prods. Corp.*, 113 Wn.2d 701, 707-708, 782 P.2d 1045 (1989) (citation omitted).

Further, as discussed later in great detail Maddy is allowed to rely upon information reasonably believed to be reliable and has no duty to verify the information pursuant to RCW 18.86.030(2). *See* § V(5), *infra*. Nord had explained the legal meaning of the restrictive covenants at sales meetings, and consistent with this representation the recorded documents contained provisions for paying school impact fees for those twenty percent of the families with children. CP 208, 218-223.

**d. David did not rely on information that Maddy provided.**

To prove negligent misrepresentation, David must prove by clear, cogent, and convincing evidence that they actually relied upon the pre-offer conveyance from Maddy, as broker for NNW and Nord, to David. However, David supplies conclusive proof that they did not rely on the pre-offer statement: Their written assent in a binding contract that says the opposite and the admission that David subsequently made his own interpretation of the restrictive covenant during the POS review contingency. David admits that he reviewed and understood all terms in the contract prior to contractually agreeing to the following:

- David acknowledged in his contract to the receipt of a “Law of Real Estate Agency” pamphlet. CP 229. RCW 18.86.120 requires that the pamphlet set forth the entire text of RCW 18.86.010-110. Thus David agreed that Maddy “owes no duty to independently verify the accuracy or completeness of any statement made by either party or by any source reasonably believed by the licensee to be reliable.” RCW 18.86.030(2).
- David agreed that “all representations and understandings are contained in the written Agreement”. CP 236.
- David agreed that Maddy “shall not be responsible for any representations or agreements that are not contained in this written Agreement.” *Id.*
- David agreed that “there are no other express or implied agreements, promises or representations except as set forth herein” CP 240.
- David agreed that their PSA was integrated and that “this agreement constitutes the entire understanding between the parties and supersedes all prior or contemporaneous understandings and representations.” CP 228.
- David agreed that their purchase of the subject property was contingent on their seven day review of the POS and that they had

a right to terminate “if Buyer disapproves the Public Offering Statement, this Agreement shall terminate.” CP 229.

These contractual terms are fatal to David’s allegations that they relied upon on Maddy’s pre-offer oral statement regarding the meaning of the age restriction covenant at the subject property. A party to a contract that he has voluntarily signed may not assert that he did not read it, or was ignorant of its contents. *Skagit State Bank v. Rasmussen*, 109 Wn.2d 377, 381, 745 P.2d 37 (1987) (citations omitted). The whole panoply of contract law rests on the principle that one is bound by the contract he voluntarily and knowingly signs. *Id.*, at 381. In *Lake Air, Inc. v Duffy*, 42 Wn.2d 478, 256 P.2d 301 (1953), the Court stated:

Appellant had ample opportunity to examine the contract in as great a detail as he cared, and he failed to do so for his own personal reasons. Under these circumstances, he cannot be heard to deny that he executed the contract, and he is bound by it.

*Id.*, at 480.

David reviewed the terms of the PSA prior to signing the contract and understood that the PSA language meant that he could not rely on any representations not contained in their PSA.

Q. You stated earlier that you reviewed the terms of this purchase and sale agreement?

A. Yes.

Q. Before signing and initialing it?

A. Yes.

CP 511.

- Q. Anywhere in this document does it state that 20 percent of the units can be rented to people with children?
- A. No. This is the purchase and sale agreement, no.

CP 512.

- Q. And so pursuant to Paragraph 8, it was your understanding that all representations were within this agreement?
- A. Correct.

CP 513.

The integration clause in particular defeats David's claim. When a written, integrated contract is unambiguous, the court must "declare the meaning of what is written," not rewrite it. *Meyer v. Consumers Choice, Inc.*, 89 Wn. App. 876, 880, 950 P.2d 540, 542 (1998). The law presumes David to have read and acknowledged the multiple provisions of the PSA in which they contractually agreed not to rely on pre-offer statements by real estate agents or on any pre-offer communications not written in their contract and to review the POS during their seven day contingency period to their own satisfaction.

**e. Any reliance by David on Maddy's conveyance of information was not reasonable.**

David's claim for negligent misrepresentation must be dismissed unless David can provide clear, cogent, and convincing evidence that they **justifiably** relied on the pre-offer information from Maddy. Whether a

party justifiably relied is a question of fact unless “reasonable minds could reach but one conclusion,” in which case the issue may be determined as a matter of law. *Bolser v. Clark*, 110 Wn. App. 895, 903, 43 P.3d 62 (2002) (citing *Barnes v. Cornerstone Invs., Inc.*, 54 Wn. App. 474, 478, 773 P.2d 884, review denied, 113 Wn.2d 1012, 779 P.2d 730 (1989)). In *Barnes*, the court held that a plaintiff’s reliance on an opinion letter was unjustified as a matter of law, in part, because the opinion letter contained “numerous explicit disclaimers and conditions to its use” that made the plaintiff’s reliance unreasonable. *Barnes*, 54 Wn. App. at 478.

Further, a plaintiff’s reliance on false information must be reasonable. *Lawyers Title Ins. Corp v. Baik*, 147 Wash.2d 536, 545, 55 P.3d 619 (2002). A plaintiff must not have been negligent in relying on the representation. *ESCA Corp. v. KPMG Peat Marwick*, 135 Wn.2d 820, 826-827, 959 P.2d 651 (1998). The rule is that such reliance must be reasonable under the circumstances, that is a party may not be heard to say that he relied upon a representation when he had no right to do so. *Williams v. Joslin*, 65 Wn.2d 696, 698, 399 P.2d 308 (1965). Finally, the right to rely on representations is inseparably connected with the correlative problem of the duty of a representee to use diligence in respect of representations made to him. *Id.*

As is the case in the present case, the law is clear that there is no justifiable reliance where a document contains explicit disclaimers that the representations were not to be relied upon. *ESCA Corp*, at 832-33 (Holding reliance on draft audit marked “Preliminary Draft” disclaimer was not justified), *Barnes v. Cornerstone Inv. Inc.*, 54 Wn. App. 474, 478-79. David did not justifiably rely on the oral statement made by Maddy and without justifiable reliance David’s negligence claims must fail.

David had evidence of the actual age restriction, and reviewed and executed documents acknowledging that David had no right to rely upon any oral representation that contradicted the language of the documents. *Williams*, at 698. In addition, David failed to exercise the necessary due diligence in respect of representations made to him. First, David did not seek the counsel of an attorney as the POS document expressly advised. Second, David failed to take the basic step of asking his agent, Brad Jessup, to insert language into the parties PSA that addressed the oral representations made to Mr. David.

Q. Okay. At any time, did you ask your agent, Mr. Jessup, to insert language in here that addressed representations had been made to you outside of this agreement?

A. No, I did not.

CP 514.

It is unreasonable for David to rely solely upon a pre-offer statement relayed by Maddy because (1) David was clearly advised by the documents to seek the counsel of an attorney; (2) David admits that the language of his PSA explicitly states that he may not rely upon oral representations made by an agent and that that agents shall not be responsible for any representations that are not in the PSA; and (3) it was clear that enforcement of the restriction would be by the Declarant and/or Norwood Glen Owners Association.

**3. The trial court correctly held that negligence based CPA claims are exempt from the Consumer Protection Act.**

The law is clear that negligence claims, asserted against professionals are exempt from the Washington Consumer Protection Act, Chapter 19.86 RCW. The purpose of the Consumer Protection Act is “to compliment the body of federal law governing restraints of trade, unfair competition and unfair, deceptive, and fraudulent acts and practices in order to protect the public and foster fair and honest competition.” *Ramos v. Arnold*, 141 Wn. App. 11, 20, 169 P.3d 487 (2007) (citing RCW 19.86.920). “[C]laims directed at the competence of and strategies employed by a professional amount to allegations of negligence and are exempt from the Consumer Protection Act.” *Ramos*, 141 Wn. App. at 20 (citing *Short v. Demopolis*, 103 Wn.2d 52, 61-62, 691 P.2d 163 (1984)).

Whether an alleged act is “purposeful” is not the standard for exemption from the CPA. Rather, “it is the entrepreneurial or commercial aspects of professional services, not the substantive quality of services” that are subject to the CPA. *Ramos*, 141 Wn. App. at 20. The Washington Supreme Court recently reiterated this position that professional negligence claims are exempt from the CPA when it stated, that “the question is whether the claim involves entrepreneurial aspects of the practice or mere negligence claims, which are exempt from the CPA.” *Michael v. Mosqueara-Lacy*, 165 Wn.2d 595, 603, 200 P.3d 695 (2009).

There is no evidence before the court to show that Bryson or Maddy intentionally misrepresented the existence/affect of the age restriction or that misrepresentation of restrictions is an entrepreneurial aspect of Windermere’s business. Without proof of actual knowledge of the alleged misrepresentation, David’s claims for misrepresentation are limited to claims of negligent misrepresentation as set forth in David’s third party complaint. CP 554-555. Since claims of negligence against professionals like Bryson and Maddy are exempt from the CPA, David’s claim for violation of the CPA against Bryson and Maddy must fail and the summary judgment dismissal orders should be affirmed.

Alternatively, even if the CPA did apply, David cannot establish the first and third and fifth elements necessary to support a CPA claim. *See* § V(9), *infra*.

**4. The trial correct correctly ruled that Maddy did not commit the unauthorized practice of law.**

**a. RCW 2.48.180 defines the unauthorized practice of law.**

The central arguments asserted by David in his briefing revolve around the claim that the act of conveying or repeating of any legal information from a seller to a buyer is forbidden and a violation of RCW 2.48.180, the unauthorized practice of law. AB at page 24. RCW 2.48.180(2) defines the following actions as constituting the unlawful practice of law:

- (a) A nonlawyer practices law or holds himself out as entitled to practice law;
- (b) A legal provider holds an investment or ownership interest in a business primarily engaged in the practice of law, knowing that a nonlawyer holds an investment or ownership interest in the business;
- (c) A nonlawyer knowingly holds an investment or ownership interest in a business primarily engaged in the practice of law;
- (d) A legal provider works for a business that is primarily engaged in the practice of law, knowing that a nonlawyer holds an investment or ownership interest in the business;  
or

(e) A nonlawyer shares legal fees with a legal provider.

David fails to assert which provision of RCW 2.48.180 Maddy allegedly violated and has no evidence that Maddy violated any of five activities that constitute the unlawful practice of law. David's complaint merely alleges giving legal advice to David. CP 554. The only plausible violation would be an allegation that Maddy held herself out as being able to practice law. RCW 2.48.180(2)(a). However, David's own testimony provides conclusive proof that Maddy did not violate RCW 2.48.180(2)(a). David acknowledged that he knew Maddy was not an attorney and had no legal training.

Q. Did you understand Ms. Maddy, yes or no, to be an attorney?

A. No.

Q. Did you have any reason to believe Ms. Maddy was an attorney?

A. No.

Q. Did you have any reason to believe Ms. Maddy has a legal education?

A. No.

CP 201. Thus, the summary judgment orders dismissing David's unauthorized practice of law claim should be affirmed. Without a valid unauthorized practice of law claim, David cannot bootstrap into a CPA cause of action based upon the unauthorized practice of law.

**5. The trial court correctly ruled that a broker conveying information from a client in accordance with RCW 18.86.030 is not the practice of law.**

Historically Washington has long allowed an agent to provide information to parties that originated or was provided by the seller without liability if the agent has no knowledge that the information is incorrect. The Washington Supreme court addressed the issue at hand in *Hoffman v. Connall*, 108 Wn.2d 69, 736 P.2d 242 (1987), where the court addressed the issue of whether an agent and broker were liable for innocently conveying a seller's misrepresentations regarding the legal boundary, a legal interpretation, to a buyer. The Court declined to find liability stating **“we decline to hold that a broker must guarantee every statement made by the seller and real estate agents” and “brokers are not liable for innocently and nonnegligently conveying a seller's misrepresentations to a buyer”**. *Hoffman*, 108 Wn.2d at 77-78.

In 1996, the Washington State Legislature passed a comprehensive Real Estate Brokerage Relationship statute that codified existing case law and superseded the common law duties of brokers to the extent that they are inconsistent with the statute. RCW 18.86.120. RCW 18.86.030, the codification of pre 1996 case law and *Hoffman*, contains the duties a broker owes to all parties and states in pertinent part:

(1) Regardless of whether the licensee is an agent, a licensee owes to all parties to whom the licensee renders real estate brokerage services the following duties, which may not be waived:

...

(2) Unless otherwise agreed, a licensee owes no duty to conduct an independent inspection of the property or to conduct an independent investigation of either party's financial condition, and owes no duty to independently verify the accuracy or completeness of any statement made by either party or by any source reasonably believed by the licensee to be reliable. RCW 18.86.030(2). (Emphasis Added)

*Hoffman* and RCW 18.86.030 make clear that Maddy did not owe a duty to verify the accuracy or completeness of the statements made by Nord on behalf of NNC. If the law were to hold otherwise the brokerage community would grind to a halt as brokers would be prohibited from making any statements concerning a property. Any holding to the contrary would have broad impacts beyond real estate brokers and would impact any individual who was relaying information of a legal nature to another individual.

In contrast, RCW 18.86.040 sets forth seller's agent duties while its counterpart RCW 18.86.050 set forth buyer's agent duties. These sections of RCW 18.86 set forth additional duties that a broker owes solely to their client including the obligation to disclose to their client any conflicts of interest and the duty to advise their client to seek expert advice on matters beyond the agent's expertise. RCW 18.86.040(b)(c); RCW 18.86.050(b)(c). Jessup, as the broker representing David, had a duty to advise David of any conflict of interest and the duty to advise David to

seek expert advice. However, as the seller's agent, Maddy did not owe David the duties of a buyer's agent. Her duties were limited and specifically, Maddy did not owe a duty to disclose any conflicts of interest or a duty to advise David to seek expert advice.

RCW 18.86.110 states that RCW 18.86 "supersedes only the duties of the parties under the common law...to the extent inconsistent with this chapter... and...This chapter does not affect the duties of a licensee while engaging in the authorized or unauthorized practice of law as determined by the courts of this state. RCW 18.86.110. The duties under RCW 18.86 remain when a licensee is providing brokerage services and the mere fact that an allegation of the unlawful practice of law is made does not render RCW 18.86 inapplicable. Further, it is clear that a duty to know the truth is inconsistent with RCW 18.86 which specifically limits the duties of a broker and allows them to rely upon information received from other parties and relieves them of any duty to verify the accuracy of such information.

Finally, there is no evidence before the court to support the claim that complying with RCW 18.86 is in fact the practice of law. "It is the nature and character of the service performed which governs whether given activities constitutes the practice of law." *Perkins v. CTX Morg. Co.*, 137 Wash.2d 93, 97, 969 P.2d 93(1999).

The evidence before the court is clear that Maddy was a conduit for information from NNC to David and that David has no evidence that Maddy made an independent exercise of legal discretion in conveying information to David. Maddy's actions were not of the nature and character of an attorney-client relationship. Maddy did not draft any contractual language for David. Maddy was acting as an adversary representing another party, and David acknowledged that he knew Maddy was not an attorney, not acting as one and didn't believe she had a legal education. *See* § V(4)(a), *supra*. Rather, Maddy was doing what licensed real estate brokers are allowed to do and do in transactions every day: convey information from their seller to the buyer as authorized by RCW 18.86.

- a. **RCW 64.34.405, governing the requirements of a POS and liability on incorrect information is instructive and consistent with RCW 18.86.**

The POS statute, like RCW 18.86.030(2), shows a clear legislative intent that brokers should not be held liable for the mere communication of information from a seller. RCW 64.34.405, entitled Public offering statement – Requirements – Liability states that an agent assisting the declarant in preparing the public offering statement **may rely upon information provided by the declarant without independent investigation.** The **agent shall not be liable** for any material

misrepresentation in or omissions of material facts from the public offering statement **unless the person had actual knowledge** of the misrepresentation or omission at the time the public offering statement was prepared. RCW 64.34.405.

Maddy had no actual knowledge that the interpretation of the restrictive covenant, located in the POS, from her client was incorrect. CP 208-209. It is clear that the legislature does not intend for an agent to be a guarantor and be liable for the misrepresentations of a declarant or seller. To hold otherwise would bring the entire real estate industry to a halt.

**6. The caselaw cited by David in support of his unauthorized practice of law claim is not on point and inapplicable to the facts of this matter.**

David's appellate brief cites to *Estate of Marks*, 91 Wn. App. 325 (1998, Div.III) and *Burien Motors Inc. v. Balch*, 9 Wn. App. 573 (1973, Div. I) in support of his claim that the Maddy's conveyance of information from Nord to David was the unauthorized practice of law. AB 9-10. However, both cases are inapposite as the cases deal with the question of whether the preparation of legal instruments or the drafting of legal addendums is the practice of law. These are not allegations made by David and are not issues before the court.

Further, David has also cited case law that is no longer good authority. David's citation to *Burien Motors Inc. v. Balch*, 9 Wn. App.

573, 577, 513 P.2d 582 (1973) for the proposition that a broker had a duty to know the truth and that an “honest mistake” was not a defense and that advice from a broker to their client was the unauthorized practice of law. AB 10. However, the *Burien Motors* decision and other decisions from the 1970’s have been codified and superseded by the enactment of RCW 18.86 on January 1, 1997 which explicitly sets forth the duties a broker owes to parties when providing brokerage services. *See* § V(5)(a), *supra*.

David has offered no case law in support of the idea that repeating a seller’s representations constitutes the unauthorized practice of law and it does not violate RCW 2.48.180(2)(a) which defines the unauthorized practice of law. *See* § IV(4)(a), *supra*. Counsel is not aware of any case law in Washington or any other state to support such a claim.

Washington case law holds that that where a lay employee did not exercise any legal discretion during their participation of document preparation this doesn’t constitute the unauthorized practice of law. *Perkins*, at 137 Wash.3d 93, at 97. Similarly, the Washington Supreme Court has authorized nonlawyers to exercise some legal discretion by allowing them to insert lawyer drafted clauses into lawyer drafted real estate forms. *Cultum v. Heritage House Realtors, Inc.*, 103 Wash.2d 623, 630, 694 P.2d 630 (1985). However, these cases are merely instructive as to what actions do not constitute the unauthorized practice of law.

David's claims are not based upon the selection or preparation of documents.

It is clear that no attorney-client relationship existed between Maddy and David. David had his own broker representing his interests in the transaction. Rather, as David admits, he was relying upon pre-offer information that Maddy in her capacity as broker for the seller Nord relayed to David. This is not evidence of an attorney-client relationship or the unauthorized practice of law.

**a. *Jones v. Allstate* is not remotely related to the facts or David's allegations in this matter.**

David also relies upon *Jones v. Allstate*, 146 Wn.2d 291, 45 P.3d 1068 (2002) for the notion that the actions of Maddy and Bryson constitute the unauthorized practice of law. Such reliance is in error. The *Jones* decision does not provide authority for the idea that the conveyance of pre-offer information is the unauthorized practice of law.

The facts in the *Jones* decision are not analogous and do not support a reversal of the prior rulings dismissing this matter. In *Jones*, the trial court found that Allstate assigned a claims adjuster to the Plaintiff who led them to believe that she had their best interests in mind while she simultaneously appeared disinterested in the outcome all while Allstate had a stated goal of assigning claims adjusters to reduce attorney

involvement in settlement of claims. *Jones*, at 308-309. This led the trial court to find that the relationship was nonadversarial and began to mimic an attorney-client relationship. *Id.* at 302. Further, the adjuster “went beyond the actions of a mere scrivener when she advised the Joneses to sign the release and failed to advise them of the consequences...” *Id.* at 305. The Washington Supreme Court in review stated:

“We are asked to determine whether an insurance company’s claims adjuster who developed a nonadversarial relationship with an unrepresented claimant was practicing law when (1) she completed claims forms, (2) advised the claimants regarding the settlement process, and (3) recommended that the claimants sign a complete settlement and release without (4) advising them that there were potential legal consequences or referring them to independent counsel.”

*Jones* at 295 (numbers added).

In *Jones*, the court found that “the actions of the claims adjuster in this instance constituted the practice of law”. *Id.* This was based upon the finding that “Allstate Insurance Company’s” employees conduct fell below the standard of care of a practicing attorney when she did not disclose her conflict of interest, advised the claimants, Janet and Terry Jones, to sign the release of all claims arising from the incident, and did not either properly advise the Joneses that there were potential legal consequences of signing Allstate’s settlement check and release or refer them to independent counsel.” *Id.* at 295.

In the present matter there are no allegations against Maddy other than her single conveyance of information from Nord to David. Further, it is undisputed that Bryson had no direct contact with David. There is also no evidence or allegation by David that the conduct of Maddy began to mimic an attorney-client relationship. Maddy did not draft any contractual language for David. Maddy was acting as an adversary representing another party and an adversarial posture generally prevents a party from engaging in the practice of law. *Id.*, at 302. Finally, David acknowledged that he knew Maddy was not an attorney and had no legal training.

David had their own broker represent their interests and prepare their written offer for the subject property. The Joneses had no separate counsel that would have owed them duties unlike David who had their broker Jessup. In sum, the underlying facts that led the court in the *Jones* decision to make a finding of the practice of law by third parties bear no relationship to the actions of Bryson and Maddy.

**b. The *Bohn* Test is not a test to determine if one has engaged in the unauthorized practice of law.**

David further argues in their appellate briefing that analyzing and applying a modified *Bohn* test is used to determine whether the practice of law is unauthorized. AB at 16-20. David has asserted that the *Jones* decision used a modified *Bohn* test, established in *Bohn v. Cody*, 199

Wn.2d 357, 832 P.2d 71 (1992), to establish the unauthorized practice of law and spends a large section of their briefing going through these six steps in order to argue that the conduct of Maddy was the unauthorized practice of law. AB at 16-20. However, the reliance by David is misplaced.

The *Bohn* test does not determine whether someone has engaged in the unauthorized practice of law or practice of law. Rather, the *Bohn* test is used to assess whether an attorney owes a duty to a third party, not whether certain actions are the unauthorized practice of law. The *Jones* court stated in relevant part:

“We need not decide the issue of whether the activities are *unauthorized*. ... This court is not being asked to issue an injunction, but instead to determine whether Allstate had a duty, the breach of which could support a claim against Allstate for negligence.” *Jones*, at 305.

...

“*Bohn* recognizes that “[u]nder certain circumstances, an attorney may be held liable for malpractice to a party the attorney never represented. To assess whether a duty is owed to a third party, *Bohn* applies a multifactor balancing test...”. *Jones*, at 306.

The *Jones* court found that “the essence of the duty owed in this circumstance is that of an attorney to an unrepresented third party.” *Id.* at 307. In the present matter David was not unrepresented, rather they were represented by their broker Jessup. Going through the *Bohn* factors to determine whether someone acting as an attorney owes a duty to a third

party provides no guidance to the court in determining what constitutes the practice of law nor does it provide a basis to reverse the summary judgment orders dismissing this matter.

**7. Maddy owed no duty to advise David to seek independent legal counsel.**

David has falsely asserted that Maddy owed a duty to advise David to seek independent legal counsel AB at 11-12. The duties of Maddy to an adverse party are limited and set forth in RCW 18.86.030. Maddy did not have a duty to advise David to seek independent legal counsel under RCW 18.86.030. RCW 18.86.040 Seller's agent—Duties states in relevant part that a Seller's agent (Maddy), commonly referred to as a listing broker, has a duty to advise **the seller**, to seek expert advice on matters relating to the transaction that are beyond the agent's expertise. RCW 18.86.040(c). There is no corresponding duty for a Seller's agent to advise a buyer, David, to seek expert advice.

The duty to advise a party to seek expert advice is not in the general duties that a broker owes all parties regardless of whom they represent in the transaction as set forth in RCW 18.86.030. The duty to seek expert advice belonged solely to David's own broker Jessup, who was not named in the lawsuit. RCW 18.86.050.

Further, David's contract explicitly advised David to seek legal counsel. CP 213. Absent evidence of a duty or evidence in support of the notion that a broker has an independent obligation to advise an adverse party to seek legal counsel there is no merit to such an allegation.

**8. David consented to and acknowledged in writing that both brokers worked for the same brokerage. There was no violation of RPC 1.8 and 1.10**

**a. Violation of the Rules of Professional Conduct do not provide for civil liability.**

The Washington Supreme Court has clearly stated there is no independent cause of action for any such violation by stating that "...the Code of Professional Responsibility (CPR) and Rules of Professional Conduct (RPC) do not set forth a standard for civil liability. Thus, violations of their provisions do not give rise to an independent cause of action..." *Hizey v. Carpenter*, 119 Wn.2d 251, 258-259, 830 P.2d 646 (1992).

**b. David consented to any potential conflict.**

David's assertion that Bryson and Maddy violated RPC 1.8 and 1.10 by allegedly failing to disclose a potential conflict based upon the allegation that Maddy did not disclose to David that she and Jessup were from the same brokerage is patently false, as set forth above does not provide a basis for civil liability and is a waste of the court's time. AB 12.

The evidence is undisputed that the PSA that David executed contains an agency disclosure provision which clearly states that the Selling Licensee (Jessup) was representing David, and that the Listing Agent (Maddy) was representing the Seller and that both brokers worked for Windermere R. E. Arlington. CP 226. David expressly consented to this by executing the PSA which contained Paragraph T, Agency Disclosure. CP 229. Further, David readily admitted that he knew Maddy and Jessup were from the same brokerage. When asked if he was aware of this at his deposition, he provided the following response:

A. Yes, but I understood that they were at the same employer.

...

Q. So it's safe to say that them being from the same office was not an issue as far as you were concerned?

A. No.

CP 196. It is clear there were no violations of RPC 1.8 and 1.10.

**9. The trial court correctly determined that there is no evidence of a CPA violation by dismissing David's CPA claim based upon the unlawful practice of law.**

The law is well settled that to establish a claim under the CPA five elements must be proven: (1) an unfair or deceptive act or practice, (2) occurring in trade or commerce, (3) with a public interest impact, (4) injury to plaintiff in his or her business or property and (5) causation. *Sing v. John L. Scott, Inc.*, 134 Wn.2d 24, 30, 948 P.2d 816 (1997) (citing *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d

778, 784, 719 P.2d 531 (1986)). The failure to establish any of these elements will defeat a CPA claim. *Hangman*, 105 Wn.2d at 793, 719 P.2d 531. In the instant case, David cannot establish the first, third and fifth elements necessary to support a CPA claim.

**a. There was no an unfair or deceptive act.**

“[K]nowing failure to reveal something of material importance is ‘deceptive’ within the CPA.” *Robinson v. Avis Rent A Car Sys., Inc.*, 106 Wash. App. 104, 116, 22 P.3d 818 (2001). In the present case Maddy did not know that the information she conveyed on behalf of her seller was false. Maddy performed brokerage duties owed to David in accordance with her limited duties under RCW 18.86. Maddy is allowed to convey information from her seller to prospective buyers. RCW 18.86.030(2). Conveyance of information from a seller believed to be accurate to a buyer or buyer’s broker is neither unfair nor deceptive.

Further, Maddy did not hold herself out as an attorney. David has acknowledged that he knew Maddy was not an attorney and that she was merely conveying information from NNC regarding his age restriction questions.

**b. The evidence does not support the public interest prong of a CPA violation.**

Real estate transactions are generally considered private affecting only the parties involved, not the public interest and should not give rise to a CPA claim. *Sato v. Century 21*, 101 Wn.2d 599, 681 P.2d 242 (1984). The public interest is impacted by a private dispute where there is a likelihood that additional plaintiffs have been or will be injured in exactly the same fashion. *Edmonds v. John L. Scott Real Estate, Inc.*, 87 Wash. App. 834, 847, 942 P 2d 1072 (1997). David's claims are unique to the subject transaction and David cannot prove additional people have been or will be affected in "exactly the same fashion." Accordingly, there is insufficient evidence of the third element necessary for a valid CPA claim.

**c. Maddy's pre-offer statement was not the proximate cause of David's alleged injuries.**

The fifth element of a CPA claim is proximate causation. *Washington State Physicians Ins. Exchange & Ass'n v. Fisons Corp.*, 122 Wash. 2d 299, 314, 858 P.2d 1054, 1062 (1993). We conclude where a defendant has engaged in an unfair or deceptive act or practice, and there has been an affirmative misrepresentation of fact, our case law establishes that there must be some demonstration of a causal link between the misrepresentation and the plaintiff's injury. *Indoor Billboard/Washington, Inc. v. Integra Telecom of Washington, Inc.*, 162 Wash. 2d 59, 83, 170 P.3d 10, 22 (2007) Proximate cause is a factual question to be decided by

the trier of fact. *Id.* We hold that the proximate cause standard embodied in WPI 15.01 is required to establish the causation element in a CPA claim. A plaintiff must establish that, but for the defendant's unfair or deceptive practice, the plaintiff would not have suffered an injury. *Id.*

David's allegations are based upon a single pre-offer conversation between David, Jessup and Maddy. The allegations are not based upon the conveyance of information after David had entered into his PSA. The causation chain necessary for David's CPA claim was broken by multiple events. First, David failed to instruct Jessup to prepare a PSA and negotiate an offer that reflected his understandings and requirements for the deal. Second, David signed a contract expressly acknowledging that he was not relying upon any pre-offer representations by Maddy. Third, the PSA advised David to seek legal counsel. David signed the terms of the PSA and a voluntary signatory is bound to a signed contract *even if ignorant of its terms. Sherman v. Lunsford*, 44 Wash.App. 858, 861, 723 P.2d 1176 (1986). Fourth, David reviewed the covenants himself and made his own independent interpretation of the restrictive covenants:

- Q. And what was your interpretation of that, that statement?
- A. There was no age limit on the other 20 percent, which verified what Ms. Maddy told me.

CP 202.

In lieu of exercising due diligence David failed to contact an attorney, took no action other than reading the POS and let his review period automatically expire. All of these facts are undisputed and break the causation chain necessary for David's CPA claim.

## VI. CONCLUSION

The lower court's decision dismissing all claims against Bryson and Maddy should be affirmed.

RESPECTFULLY SUBMITTED this 3<sup>rd</sup> day of December, 2013.



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By Bryan R. Cossette, WSBA #34039  
Attorney for Respondents Bryson and  
Maddy

DECLARATION OF SERVICE

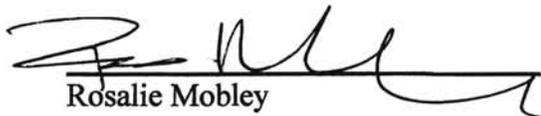
I, Rosalie Mobley, state:

On this day I caused the foregoing Respondents Brief to be delivered by ABC Legal Messengers for delivery no later than December 4, 2103 to the Court of Appeals Division I and to

Frederick Ockerman, counsel for Appellant, and Richard Nord, Pro se Respondent, electronically via e-mail per the parties agreement.

Declarant is a resident of the State of Washington and over the age of eighteen (18) years. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 4th day of December, 2013 at Seattle, Washington.

  
Rosalie Mobley