

72225-5

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No. 72225-5-I

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

KARL BENZ and CATHERINE RILEY,

Appellants

v.

JOHN RASHLEIGH, an individual,
PETER C. OJALA, an individual,
CARSON LAW GROUP, PS, a Washington corporation,
and DOES I thru V, inclusive,

Respondents

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STATE OF WASHINGTON
COURT OF APPEALS
DIVISION I
CLERK

**APPELLANTS' BRIEF IN REPLY TO RESPONSE OF
JOHN RASHLEIGH**

KARL BENZ and
CATHERINE RILEY
Appellants pro se

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TABLE OF CONTENTS

REPLY TO INTRODUCTION1

ARGUMENT.....1

**A. The Trial Court Erred in Granting Rashleigh’s
 Motion for Dismissal Under CR 12(b)(6)1**

**1. Facts and Evidence are Consistent With the
 Complaint and Legally Sufficient to Support
 Benz/Riley’s Claims1**

CONCLUSION6

TABLE OF AUTHORITIES

Cases

Walker v. Wenatchee Valley Truck & Auto Outlet, Inc., 229 P.3d
871, 155 Wash.App. 199 (2010).....3

Statutes

RCW 19.86.1703

I. REPLY TO INTRODUCTION

In reply to Brief of Respondent John Rashleigh (“Rashleigh Response Brief”), Rashleigh finally makes the correct distinction between Benz and Riley’s causes of action on the one hand and, on the other hand, the twisted story that Respondents used to persuade the lower court to believe. This case is about deceptive acts and practices (perjury and conspiracy) committed by Respondents which damaged Benz and Riley and is not about whether Benz and Riley were home and whether or why the power was turned off. It is also not about forum shopping as put forth by Rashleigh’s co-Respondents which is addressed in the Reply to their Response.

Rashleigh’s arguments are unpersuasive and the order of dismissal of Rashleigh should be reversed.

II. ARGUMENT

A. The Trial Court Erred in Granting Rashleigh’s Motion for Dismissal under CR 12(b)(6).

1. Facts and Evidence are Consistent With the Complaint and Legally Sufficient to Support Benz/Riley’s Claims

Rashleigh states that “BENZ/RILEY’s complaint makes it clear that Rashleigh essentially got it right in his affidavit of attempted service:

he was not able to serve BENZ/RILEY because they were not residing in the home; and the power to the residence was turned off.” (Rashleigh Response Brief, page 4). This is nothing more than a continuing effort on the part of Rashleigh to divert the Court’s attention away from Rashleigh’s and his co-Defendants’ deceptive acts and practices.

The Complaint is clearly not about whether Benz and Riley’s residence was occupied (it was not vacant as the home was fully furnished which was visible from the exterior) or whether, or why, the power was turned off. It is about Rashleigh and Ojala/Carson committing perjury and conspiracy which are not only crimes against the State of Washington, but also resulted in deceptive acts and practices damaging Benz and Riley.

Rashleigh continues to talk about apples (no one home and power turned off) while the Complaint is about deceptive acts and practices (perjury and conspiracy).

As discussed in Benz and Riley’s Opening Brief, (Argument, Section B.2.e., pages 18), the CPA has been expanded over time to specifically deter every bad actor in the conduct of their business, in any trade or commerce, indirectly affecting the people of the State of Washington and no direct consumer relationship is required. Perjury and conspiracy, aside from being criminal acts, certainly fall within the description of deceptive acts and practices.

The CPA also sets forth what actions or transactions are to be considered exempted from the Act.

Nothing in this chapter shall apply to actions or transactions otherwise permitted, prohibited or regulated under laws administered by the insurance commissioner of this state, the Washington utilities and transportation commission, the federal power commission or actions or transactions permitted by **any other regulatory body or officer acting under statutory authority of this state** or the United States: [...]. (Emphasis added.)

RCW 19.86.170

An industry practice falls within the regulation exception when the activities in question were “authorized by statute and that acting within this authority the agency took overt affirmative actions specifically to permit the actions or transactions.” In re Real Estate Brokerage Antitrust Litigation, 95 Wash.2d 297, 301, 622 P.2d 1185 (1980); accord, Singleton v. Naegeli Reporting Corp., 142 Wash.App. 598, 607-608, 175 P.3d 594 (2008). **Stated another way, the activity in question must be expressly permitted instead of merely being not prohibited.** No administrative code provision approved or authorized the advertising utilized here. Rather, the ad simply did not run afoul of the code's prohibitions.

The challenged actions were not “permitted, prohibited, or regulated” by another agency. Thus, the exclusion of RCW 19.86.170 was inapplicable. The CPA could apply to this behavior.

Walker v. Wenatchee Valley Truck & Auto Outlet, Inc., 229 P.3d 871, 155 Wash.App. 199 (2010)

Rashleigh’s deceptive acts are not ‘permitted actions’ under any regulatory body governing his behavior.

It is significant that Rashleigh and his co-Respondents have over time changed the wording they use to describe the events, from unequivocal statements meant to persuade the commissioner pro tem to enter an order for electronic service when personal service of orders is required, to words implying mistake or incorrect assumption. Rashleigh and Ojala/Carson had the motive and the means by which to commit perjury and conspiracy to commit perjury and their perjured documents have substantiated those acts.

Rashleigh's comparison chart (Rashleigh Response Brief, page 5) of the perjured statements to the allegations in the complaint is again comparing the apples to oranges.

The salient facts are not that no one was home on Rashleigh's single attempted service or that the power was off or why.

The salient facts are that Rashleigh and his co-Respondents engaged in deceptive acts and practices (perjury and conspiracy to commit perjury) which caused damages to Benz and Riley.

Rashleigh's argument fails to show that he was entitled to dismissal. The facts alleged in the Complaint are consistent with the Complaint and sufficient to justify recovery by Benz and Riley.

Contrary to Rashleigh's assertions, he did much more than state that the home 'appeared abandoned' and 'assumed' power was off for

non-payment. He stated conclusively that there was no furniture in the home (which was not true and despite plenty of furniture being visible from the exterior), and also conclusively that power was off for non-payment. Rashleigh would have us now believe that his criminal acts, resulting in violation of the CPA against Benz and Riley were simple mistakes. They were not. They were committed for the dishonest purposes of his co-Defendants Ojala and Carson to persuade the commissioner pro tem to grant the order for electronic service of orders otherwise requiring personal service.

Contrary to Rashleigh's statement, he did not 'provide his affidavit' of a single attempt of service to Ojala/Carson, as would normally be the case. The Affidavit of Attempted Service was prepared by Ojala/Carson and signed by Mr. Rashleigh without his including his process server's registration information as is required. This in itself is questionable and gives rise to serious suspicions of conspiracy among Rashleigh, Ojala and Carson.

As discussed in Benz and Riley's opening Brief (Argument, Section B.2.f. page 19), Washington is a notice pleading state where a plaintiff only need only state a cause of action in plain language with sufficient facts as a way to notify parties of the general issues of a case.

Additional argument regarding conspiracy and sanctions is contained in Appellants' Brief in Reply to Response of Peter C Ojala and Carson Law Group, P.S. filed concurrently herewith and is incorporated herein by this reference.

III. CONCLUSION

The order of Dismissal of Rashleigh and for sanctions should be reversed.

Respectfully submitted this 26th day of January, 2015.


Karl Benz, Appellant pro se


Catherine Riley, Appellant pro se