

No. 74976-5-I
IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

WYNDEN HOLMAN and JAMIE HOLMAN,

Appellants,

v.

THOMAS DUTCHER and DIANE DUTCHER,

Respondents.

APPELLANTS' REPLY BRIEF

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COURT OF APPEALS
STATE OF WASHINGTON

TABLE OF CONTENTS

I. INTRODUCTION.....1

II. FACTS3

III. REPLY TO RESPONSE ARGUMENTS7

A. Respondents’ focus on lien form and RCW 60.04 does not change Appellant’s legal arguments that the lien itself did not amount to slander of title.7

1. Claim of Lien form was not intended as a lien under RCW 60.04.7

2. Even if the lien was intended under RCW 60.04, statutory provisions govern the invalidation or removal of materialman’s liens.8

3. Appellant did not have to be a licensed contractor under RCW 18.27 to record a lien for services rendered on a property.14

B. Appellant’s lien, even if invalid, does not amount to slander of title or give rise to attorneys’ fees as special damages.....17

C. Appellant was not acting in his professional capacity in performing work on the Property or in filing his lien and therefore the Consumer Protection Act is not triggered.19

IV. CONCLUSION.....22

TABLE OF AUTHORITIES

Washington Supreme Court Cases

City of Seattle v. McCready
131 Wash.2d 266, 931 P.2d 156 (1997)19, 20

Guimont v. Clarke
121 Wash.2d 586, 854 P.2d 1 (1993)17

Hebb v. Severson
32 Wash.2d 159, 201 P.2d 156 (1948)17

Michael v. Mosquera-Lacy
165 Wash.2d 595, 200 P.3d 695 (2009)22

Powell v. Nolan
27 Wash. 318, 67 P. 712, 68 P. 389 (1902).11

Rorvig v. Douglas
123 Wash.2d 854, 873 P.2d 492 (1994).18, 19

W.R.P. Lake Union Ltd. Partnership v. Exterior Services, Inc.
85 Wash.App. 744, 934 P.2d 722 (1997)..... 11

Washington Court of Appeals Cases

Blake Sand & Gravel, Inc. v. Saxon
98 Wash.App. 218, 989 P.2d 1178 (1999).....10,

Pacific Industries, Inc. v. Singh
120 Wash.App. 1, 86 P.3d 778 (2003).....12, 13

Quinn v. Connelly
63 Wash.App. 733, 821 P.2d 1256 (1992)22

Revised Code of Washington State

RCW 18.27, *et seq*9, 15, 16

RCW 18.85.011(16) (a)-(h)	21
RCW 19.36.010.....	10
RCW 19.86.010(2)	21
RCW 60.40, <i>et seq</i>	9, 10, 11, 14, 15
RCW 65.08.070	5

Secondary Sources

Restatement (Second) of Torts § 633 (1977).....	19
Black’s Law Dictionary (10 th ed. 2014), “trade and commerce”	21

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APPELLANTS' REPLY
BRIEF

I. INTRODUCTION

The case at hand came into being because Appellant Wynden Holman (individually, "Appellant") and Respondent Thomas Dutcher (individually, "Tom") both loaned money, services, and time to Appellant's brother Darin Holman ("Darin") and Darin's former wife (and Tom's daughter) Kristen McKenzie (f/k/a Holman) in their purchase and improvement of the property commonly known as 4704 Pacific Highway, Bellingham, Washington (the "Property").

While Appellant initially offered his money and assistance to Darin as a favor, with the expectation he would be repaid, when it became clear that wasn't possible Darin instructed Appellant to file a lien against the Property for services rendered so he could be repaid at a later date. Appellant later recorded a second lien against the Property, at the urging of Darin, when a title officer made the determination that his original lien had expired.

Respondents' brief attempts to conflate the issue of slander of title (and by extension his claim for violation of the Consumer Protection Act) by focusing on the type of lien form filed by Appellant and its technical deficiency as a materialman's lien under RCW 60.04, *et seq.* Respondents also claim that Appellant performed services at the Property in the furtherance of his real estate profession, which is patently false.

Appellant filed a lien against the Property for money owed to him as a result of rendering time and money to improve it; not as a contractor or real estate broker. Appellant was not required to be licensed as a contractor under RCW 18.27 because he is not a contractor and he did not perform the work of a contractor. Appellant may have chosen the wrong form to record in order to secure the interest in the Property offered to him by Darin, but the Respondents' arguments regarding the claim of lien form

itself do not change the fact that their claims against Appellant must fail as a matter of law and should have been dismissed at summary judgment.

II. FACTS

Darin and Kristen acquired the Property in 2008 for the purpose of operating a manufactured home business.¹ After acquiring the Property, Appellant assisted his brother with various projects at the Property. Appellant also performed work over the years in connection with Darin's manufactured home business.² Appellant provided funds and general assistance in getting the business up and running at the Property. He helped install signage at the Property.³ Appellant also arranged and attended meetings with Whatcom County officials, Port of Bellingham, attorneys, wetland specialists and contractors in helping with permitting issues for the Property on behalf of Darin which were necessary to run Darin's business out of the Property.⁴ None of the work Appellant performed was as a real estate broker nor could it be classified as "real estate brokerage services" under RCW 18.85.011.

Appellant performed this work as a favor to his brother with the understanding that when the business was operational, Darin would

¹ CP 321-322.

² Id.

³ Id.

⁴ Id.

compensate Appellant for his time and money.⁵ When it became clear that he could not pay him for his efforts, Darin told Appellant that he could obtain a lien on the Property and together they decided the value of the work Appellant had put into the Property that would be claimed in the lien.⁶ Appellant then filed the lien against the Property on April 23, 2012.⁷ While Appellant did not have a written contract for payment and services, he had an oral agreement with his brother which Darin made clear he intended to honor.⁸

In order to record the lien, Appellant used a blank “claim of lien” form.⁹ The language in this form is fairly broad, but it appears that it is intended to be used to file a mechanics’ and materialman’s lien under RCW 60.04.¹⁰ The form does not specifically reference the statute, and in fact Appellant did not intend for this lien to be filed as materialman’s lien under RCW 60.04; he believed he could use this as a general form to secure the amount owed to him and as agreed with his brother Darin.¹¹ The form is general enough that it seems to cover the circumstances for which Appellant was claiming a lien, in that he performed services on his

5 CP 202.

6 CP 322 and CP 203.

7 CP 90.

8 CP 322 and CP 101.

9 CP 90.

10 CP 93-95.

11 CP 90.

brother's Property and was offered security in order to be repaid. However, the instrument that should have been used was a deed of trust, but neither Appellant nor Darin realized that at the time.¹²

In the spring of 2013, Darin was in negotiations with the Lummi Tribe of the Lummi Reservation to purchase the Property.¹³ They entered into a purchase and sale agreement, dated June 4, 2013.¹⁴ Darin maintains that he was in charge of working with the tribe and getting the transaction closed.¹⁵ Respondents' brief states that Darin was "erroneously listed" as the owner of the Property on the first purchase and sale agreement with the Lummi Tribe, however Darin was still the owner of record until Tom recorded his warranty deed on June 27, 2013.¹⁶ Even though Darin had given Tom the warranty deed in June of 2012, Tom did not record it for over a year. Tom's interest in the Property did not fully vest as to third parties until recording of the deed.¹⁷

In conjunction with the sale by Darin to the Lummi Tribe, a preliminary title report was produced which showed a number of liens

¹² CP 90 and CP 322.

¹³ CP 322.

¹⁴ CP 322 and CP 228 – 241.

¹⁵ CP 322.

¹⁶ Id.

¹⁷ RCW 65.08.070. "Every such conveyance not so recorded is void as against any subsequent purchaser or mortgagee in good faith and for a valuable consideration from the same vendor, his or her heirs or devisees, of the same real property or any portion thereof whose conveyance is first duly recorded. An instrument is deemed recorded the minute it is filed for record."

already on title.¹⁸ Appellant's 2012 lien was not listed on the title report because the title officer had made the determination that it had expired under time periods prescribed by RCW 60.04. Tom acknowledges that he decided to record the warranty deed only after reviewing the initial title report and seeing numerous liens against the Property.¹⁹

Darin advised Appellant of expiration of the original lien and on June 28, 2013 Appellant prepared a new claim of lien form. Darin informed Whatcom Land Title escrow agent Ashley Allison (now Kenyon) that his brother should still be paid out of the proceeds of the current sale because he had promised him a lien.²⁰ Ms. Kenyon emailed Tom on July 15, 2013 and asked about paying Appellant out of escrow for the amount owed.²¹ Tom responded by saying that it was a "debt between brothers, I don't want to pay this bill...."²² After being informed that Tom did not intend to honor the original lien Appellant recorded the second claim of lien on July 18, 2013.²³ When questioned by escrow about the validity of the second claim of lien Darin confirmed to escrow that it was a valid lien.²⁴

18 CP 242 – 252.

19 CP 189.

20 CP 322 and CP 101.

21 CP 311.

22 CP 312.

23 CP 97 – 99.

24 CP 101.

Thereafter, Jim Bacus, Diane Dutcher's son, negotiated a short payoff of \$11,550.00 to be applied to Appellant's "original lien" which he confirmed in an email to Ms. Kenyon on July 24, 2013: "We are instructing you to pay him \$11,550.00 that he has agreed to accept on his original lien."²⁵ The transaction with the Lummi tribe closed on July 30, 2013.²⁶ Appellant was paid his \$11,550.00 out of escrow and executed a "release of lien" form provided by Whatcom Land Title which was recorded on or about August 8, 2013.²⁷

III. REPLY TO RESPONSE ARGUMENTS

A. Respondents' focus on lien form and RCW 60.04 does not change Appellant's legal arguments that the lien itself did not amount to slander of title.

1. Claim of Lien form was not intended as a lien under RCW 60.04.

Respondents contend that Appellant's use of the claim of lien form meant that he intended to file a mechanic's or materialman's lien under RCW 60.04, however there is no evidence to support that. Both Darin and Appellant testified that they believed Appellant was recording a consensual lien for monies owed to him which would provide Appellant

25 CP 318 and CP 103.

26 CP 153 – 155.

27 CP 105.

security in the property.²⁸ Appellant testified that he believed that the recording of the second lien was merely an extension of the first lien.²⁹

The second claim of lien form itself states “Wynden Holman, being duly sworn, states the following: in accordance with an agreement to provide labor and/or material, I did furnish the following labor and/or materials: sign installation, septic installation permits and associated fees, real estate services.”³⁰ All of those statements are true. Appellant had an oral agreement with Darin to be paid for the labor and materials he furnished for the Property. The alleged deficiencies that Respondents raise in their brief are technical deficiencies as to whether the lien complies with RCW 60.04; they do not amount to malicious falsehoods necessary to prove this element of a slander of title or Consumer Protection Act claim. Those arguments are completely moot in this context.

2. Even if the lien was intended under RCW 60.04, statutory provisions govern the invalidation or removal of materialman’s liens.

Respondents make several arguments in regards to the technical failings of the claim of lien form as a materialman’s lien under RCW 60.04; however the statute itself covers the enforcement or invalidation of such liens. Respondents point out that Appellant did not provide notice

28 CP 90 and CP 322.

29 CP 90.

30 CP 97.

required by RCW 60.04 or RCW 18.27.114 as if that is proof of the lien's invalidity. Appellant's alleged failure to comply with the notice requirements of RCW 60.04.091 does not render the claim of lien invalid (even if he was attempting to claim a lien under the statute); it merely means that he forfeited his right to recover attorneys' fees under RCW 60.04.181.

The period provided for recording the claim of lien is a period of limitation and no action to foreclose a lien shall be maintained unless the claim of lien is filed for recording within the ninety-day period stated. The lien claimant shall give a copy of the claim of lien to the owner or reputed owner by mailing it by certified or registered mail or by personal service within fourteen days of the time the claim of lien is filed for recording. Failure to do so results in a forfeiture of any right the claimant may have to attorneys' fees and costs against the owner under RCW 60.04.181.³¹

Lack of proper notice merely means that a lien claimant cannot recover attorneys' fees if they prevail on a suit to foreclose upon or otherwise enforce their lien; it does not impact the merits of lien itself. Appellant was not intending to file a lien as a contractor under RCW 18.27 and therefore he would not have provided the Notice to Customer disclosure statement required under that statute.³²

Respondents also focus their argument on the lack of written contract between Appellant and Darin and Appellant's lack of invoices for

31 RCW 60.04.091

32 RCW 18.27.114

the work provided. However, none of that is necessary for a lien to be maintained under RCW 60.04. The statute itself prescribes the form for a materialman's lien and states that:

The notice of claim of lien:

(1) Shall state in substance and effect:

(a) The name, phone number, and address of the claimant;

(b) The first and last date on which the labor, professional services, materials, or equipment was furnished or employee benefit contributions were due;

(c) The name of the person indebted to the claimant;

(d) The street address, legal description, or other description reasonably calculated to identify, for a person familiar with the area, the location of the real property to be charged with the lien;

(e) The name of the owner or reputed owner of the property, if known, and, if not known, that fact shall be stated; and

(f) The principal amount for which the lien is claimed.³³

Nothing in the statute states that the claim of lien must be supported by invoices for such materials or labor. The statute of frauds does not require a written contract for services of this nature either.³⁴ Only if a lien claimant is seeking to obtain a personal judgment against owners of property for materials delivered, as opposed to obtaining a materialman's lien on the property, must they prove either a contractual relationship between the parties, or that the owner promised to pay for the materials.³⁵

³³ RCW 60.04.091

³⁴ See, RCW 19.36.010.

³⁵ *Blake Sand & Gravel, Inc. v. Saxon*, 98 Wash.App. 218, 989 P.2d 1178 (1999).

The statute lays out the procedure for the removal of a materialman's lien in RCW 60.04.081. The chapter provides that if the owner of the property "believes the claim of lien to be frivolous and made without reasonable cause, or clearly excessive" they may file a motion to order the lien claimant to appear and set forth the basis for the lien.³⁶ And then, "following a hearing on the matter" if the court finds that the lien was frivolous or clearly excessive then an order will be issued releasing the lien and charging attorneys' fees and costs to the lien claimant.³⁷ The court can also find that the lien is valid but excessive, and reduce the amount of the lien.³⁸

A frivolous lien is one where there are "no debatable issues and is so devoid of merit that no possibility of reversal exists."³⁹ Liens that include non-lienable items are not frivolous *per se*. The Supreme Court of this state has held that just because non-lienable items are included in lien claim does not destroy the entire lien, if lienable and non-lienable items are separable and the non-lienable items have been included by mistake or under an honest belief that they were lienable.⁴⁰ Further, "to be frivolous, a lien must be improperly filed beyond legitimate dispute. Even if a lien is

36 RCW 60.04.081(4)

37 RCW 60.04.081(4)

38 RCW 60.04.081(4)

39 *W.R.P. Lake Union Ltd. Partnership v. Exterior Services, Inc.*, 85 Wash.App. 744, 753, 934 P.2d 722 (1997).

40 *Powell v. Nolan*, 27 Wash. 318, 67 P. 712, 68 P. 389 (1902).

ultimately found to be invalid, it is frivolous only if it presents no debatable issues and is so devoid of merit that it had no possibility of succeeding. Every frivolous lien is invalid, but not every invalid lien is frivolous.”⁴¹

In the case of *Pacific Industries v. Singh*, the Court found that a developer's mechanics' lien for services he performed for a real estate corporation, although not valid, was not frivolous because no state authority had held that a person providing development services could not file a lien and he asserted it believing the services rendered were lienable.

[Developer] argues that his work on Poole's Park constitutes “furnishing labor ... for the improvement of real property.” The lien statute defines “furnishing labor” as “the performance of any labor ... for the improvement of real property.” It defines labor as “exertion of the powers of body or mind performed at the site for compensation.” “Site” is defined as the real property that is being improved. Finally, “improvement” means “[c]onstructing, altering, repairing, remodeling, demolishing, clearing, grading, or filling in, of, to, or upon any real property or street or road in front of or adjoining the same.”⁴²

In that case the Court found that the lien was invalid because the services performed by Singh were not lienable under RCW 60.04, however, because the lien was not frivolous, they confirmed the trial court’s award of attorneys’ fees to Singh. “Because the lien is neither frivolous nor

⁴¹ *Pacific Industries, Inc. v. Singh*, 120 Wash.App. 1, 5-6, 86 P.3d 778 (2003)[internal citations omitted].

⁴² *Id.*

excessive, Singh is entitled to attorney fees by statute. Under RCW 60.04.081(4), '[i]f the court determines that the lien is not frivolous and was made with reasonable cause, and is not clearly excessive, the court shall issue an order so stating and awarding costs and reasonable attorneys' fees to the lien claimant to be paid by the applicant.'"⁴³ Even for an invalid (but not frivolous) lien, the Supreme Court would uphold an award of attorneys' fees to the party filing it. It does not follow that a court can impose liability for slander of title or violation of the Consumer Protection Act based on the mistaken filing of a claim of lien form under RCW 60.04.

Respondents did not follow any of the prescribed statutory procedure for dealing with what they believed was a frivolous lien. They did not appeal to the Court to remove the lien or declare it invalid; they negotiated a payoff with the Appellant for less than the amount he was owed. Further, their reliance on the technicalities of RCW 60.04 is misplaced in this case. Appellant did not intend to file a lien under RCW 60.04; he thought he was filing a consensual lien authorized by his brother Darin.⁴⁴ Even Darin thought that the form would entitle Appellant to be paid from the proceeds of sale.⁴⁵ Their mistake in using the claim of lien

⁴³ *Pacific Industries, Inc. v. Singh*, 120 Wash.App. 1, 86 P.3d 778 (2003), footnote 28.

⁴⁴ CP 90.

⁴⁵ CP 322.

form does not subject them to any sort of liability under RCW 60.04, particularly when the remedial procedure outlined in the statute was not followed by the Respondents.

3. Appellant did not have to be a licensed contractor under RCW 18.27 to record a lien for services rendered on a property.

RCW 60.04.021 states that, “Except as provided in RCW 60.04.031, *any person* furnishing labor, professional services, materials, or equipment for the improvement of real property shall have a lien upon the improvement for the contract price of labor, professional services, materials, or equipment furnished at the instance of the owner, or the agent or construction agent of the owner.”⁴⁶ Respondents’ argument that Appellant’s actions were a *per se* violation under RCW 18.27 are meritless. Appellant was not required to have a contractor’s license, did not perform the work of a contractor, and RCW 60.04 does not limit the filing of materialman’s liens only to licensed contractors. The claim itself is ridiculous and merely a way for Respondents to attempt to seek treble damages and attorneys’ fees under the Consumer Protection Act.

While the form used by Appellant is generally used for liens under RCW 60.04 that does not mean that he had to be a licensed contractor under RCW 18.27 in order to file such a lien. RCW 60.04 has an

⁴⁶ RCW 60.04.021 [emphasis added].

expansive view of the type of tradesman, professionals, contractors, or other individuals who perform labor or even simply deliver materials in connection with property improvements. The definitions section even notes that a “potential lien claimant” must be “registered or licensed if required to be licensed or registered by the provisions of the laws of the state of Washington.”⁴⁷ This wording shows that there are those who may claim a lien under RCW 60.04 who are not licensed (as contractors or otherwise) because they are not required to be.

Nothing contained within RCW 60.04 specifically requires a party to be a licensed contractor under RCW 18.27 in order to file this type of lien. In fact, only the converse is true. In order for a *contractor* to maintain a lien under RCW 60.04 they must be properly licensed under RCW 18.27. No one in this case is a contractor. Appellant rendered services which improved the Property, however they do not fall under contractor services for purposes of the Contractor Registration Act.⁴⁸ Respondents raise this issue in order to claim that they are entitled to a finding of a public interest impact under RCW 18.27, for purposes of triggering the Consumer Protection Act, when none of the claims or facts in this case arise out of one of the parties acting as a contractor. Appellant did not perform any contractor services, nor did he claim to.

⁴⁷ RCW 60.04.011(11).

⁴⁸ See, RCW 18.27.010(1)(a).

The definition of “Contractor” found in RCW 18.27.010(1)(a) does not include any of the services performed by Appellant on the Property.⁴⁹ He helped Darin design and put up signage on the Property, signage is an improvement to the real property but not a fixture; it does not become part of the realty itself. He assisted in setting up meetings with planners for permitting issues regarding the wetlands on the property and obtaining said permits for his brother. Again, those services can be construed as “labor” or “professional services” and necessary for the future improvement of the Property, but not specifically covered by RCW 18.27. Critically, none of the services performed by Appellant were “in the pursuit of an independent business venture”, which is the first element in the definition of a contractor in RCW 18.27.010. Appellant performed this work to help his brother, and his brother agreed to pay him for his time. That was not an “independent business venture”.

Appellant is not a contractor and does not need to be licensed as one. The work he performed on the property does not fall under the definition of the type of work which would require a contractor’s license. The provision found in RCW 18.27 which implicates the public interest for purposes of the Consumer Protection Act is not applicable in these circumstances and cannot form the basis for liability thereunder. RCW

⁴⁹ See, RCW 18.27.010(1)(a).

60.04 authorizes those who are not licensed contractors to file liens under the statute and therefore Appellant's lack of license is immaterial.

B. Appellant's lien, even if invalid, does not amount to slander of title or give rise to attorneys' fees as special damages.

For the reasons discussed in detail in Appellant's brief, his monetary lien against the Property cannot give rise to a slander of title claim or for the recovery of attorneys' fees as special damages. In short, as a matter of law Appellant's lien did not "go to defeating" Respondents' title. Title being synonymous with ownership, the Supreme Court of Washington has repeatedly held that the "fundamental attribute[s] of property ownership" are "the right to possess; to exclude others; or to dispose of property."⁵⁰ A lien is a monetary encumbrance which simply does not affect title, ownership, or possession of a property. An encumbrance has been defined by the Washington Supreme Court,

to be any right to, or interest in, land which may subsist in third persons, to the diminution of the value of the estate of the tenant, but consistent with the passing of the fee; and, also, as a burden upon land depreciative of its value, such as a lien, easement, or servitude, which, though adverse to the interest of the landowner, does not conflict with his conveyance of the land in fee.⁵¹

That is part of the essential reason why a monetary lien does not meet the requirement under slander of title to "defeat title", because the adverse

⁵⁰ See e.g., *Guimont v. Clarke*, 121 Wash.2d 586, 602, 854 P.2d 1 (1993).

⁵¹ *Hebb v. Severson*, 32 Wash.2d 159, 167, 201 P.2d 156 (1948) [internal citations omitted][emphasis added].

interest does not prevent the owner from conveying the land in fee. Further, a monetary encumbrance is not directly analogous to an easement or servitude, because a monetary encumbrance does not affect an owner's possession, exclusionary powers, or vendibility. Easements and servitudes impact all three of those elements.

There is no case law in Washington which discusses whether liens of this nature can even give rise to a claim for slander of title. In the cases where slander of title is discussed in depth, the key consideration is that the false and malicious publication implied that either the right to own or possess the property was in question. None of the cases on point deal with liens or publications which were simply monetary encumbrances.

Attorneys' fees in this matter were not incurred to "remove the cloud on title" or to "restore vendibility" and are therefore not recoverable as special damages. Fees awarded for a successful slander of title claim are not a typical award of attorneys' fees and costs of the type which are authorized by statute or in a contract. They are *special damages* awarded for and in actions filed in order to clear a cloud placed upon title.⁵² However, the instant case is clearly distinguishable from most slander of title actions where the plaintiff had no choice but to sue the defendant to clear the

⁵² *Rorvig v. Douglas*, 123 Wn.2d 854, 861, 873 P.2d 492 (1994).

cloud on title.⁵³ Washington allows recovery of “the expense of measures reasonably necessary to counteract the publication, including litigation to **remove** the doubt cast upon vendibility or value by disparagement.”⁵⁴ The Court in *Rorvig* awarded fees because they held that litigation was the plaintiff’s “only” course of action.

The award of attorneys’ fees as special damages is an exception to the general rule. “Thus, a more accurate statement of Washington’s American rule is attorney fees are not available as costs or damages absent a contract, statute, or recognized ground in equity.”⁵⁵ The award of fees as damages in *Rorvig* was based on equitable principles; that because the plaintiff had no choice but to litigate to remove the false publication from their title, they were entitled to recover the fees expended in doing so. “The exceptions recognizing awards of attorney fees as damages are based on a determination a wrongful act may leave another party with no choice but to litigate.”⁵⁶ However, this is an exception because of the fact that “virtually all litigation compels a party’s opponent to litigate” therefore “Washington courts have narrowly limited the type of actions where attorney fees are

⁵³ *Rorvig*, 123 Wn.2d at 857.

⁵⁴ *Id.* at 863 [quoting Restatement (Second) of Torts §663] (emphasis added).

⁵⁵ *City of Seattle v. McCready*, 131 Wash.2d 266, 275, 931 P.2d 156 (1997).

⁵⁶ *McCready*, 131 Wash.2d at 278.

awarded as damages.”⁵⁷ The equitable principles necessary to authorize an award of attorneys’ fees as damages are just not present in this case.

C. Appellant was not acting in his professional capacity in performing work on the Property or in filing his lien and therefore the Consumer Protection Act is not triggered.

Respondents claims in this case a based on Appellant’s filing of the second claim of lien in July of 2013. However, they cite the original claim of lien from 2012 (which had been deemed expired by the title company) language where Appellant stated he had performed only “real estate services” on the Property as the basis for their Consumer Protection Act claim, because Appellant is a real estate broker. The second claim of lien states that the services performed were “sign installation/ septic installation / permits and associated fees / real estate services.”⁵⁸ If the basis for their claims is the second claim of lien, then the language of the first lien is immaterial. The reality is that Appellant did not perform real estate **brokerage** services, or contractor services, on the Property. The work was not done in any trade or profession but as assistance to Appellant’s brother Darin. The facts of this case, which is really just a family dispute, fall well outside of the realm of the Consumer Protection Act because they do not occur in trade or commerce.

⁵⁷ *McCready*, 131 Wash.2d at 278.

⁵⁸ CP 97 – 99.

Trade or commerce is defined as “Every business, occupation carried on for subsistence or profit and involving the elements of bargain and sale, barter, exchange, or traffic.”⁵⁹ The Washington Legislature specifically included “the sale of assets or services, and any commerce directly or indirectly affecting the people of the state of Washington” in that definition.⁶⁰ The lien filed by Appellant and the work performed was not “in trade or commerce”.

Appellant was owed a debt by his brother Darin after he had invested time, money, and services into improving the Property during Darin’s ownership. Appellant did not perform these services in his trade or business. He is a licensed real estate broker and the activities he performed for the benefit of the Property are not encompassed by the definition of real estate brokerage services found in RCW 18.85.⁶¹ Specifically, he was not listing, selling, or purchasing the real estate, nor was he negotiating any of the above. He was not advertising for sale, or counseling a buyer or seller on real estate transactions. The work Appellant did on the Property was as a favor to his brother and in no way related to his actual profession or a transaction for sale or lease of the Property.

⁵⁹ Black’s Law Dictionary (10th ed. 2014), “trade and commerce”.

⁶⁰ RCW 19.86.010(2).

⁶¹ See, RCW 18.85.011(16) (a)-(h).

A claim for a violation of the Consumer Protection Act, in order to meet the “trade or commerce” element, must actually deal with the entrepreneurial aspect of the business in question, not merely the work itself.⁶² “The term ‘trade’, as used by the Consumer Protection Act (CPA), includes only the entrepreneurial or commercial aspects of professional services, not the substantive quality of services provided.”⁶³ The work done on the Property and the subsequent filing of the liens were done by Appellant in his personal and private capacity, as a brother of Darin and former relative of Respondents. Nothing in this case was done in furtherance of his business or career as a real estate broker.

IV. CONCLUSION

Respondents’ arguments regarding the technical deficiencies of the claim of lien form used by Appellant do not change the fact that the lien itself did not amount to slander of title as a matter of law. Respondents are not entitled to an award of attorneys’ fees as special damages when the lien did not go to defeating title and the fees were not incurred in removing the cloud on title but rather in a debt collection claim years later.

The Consumer Protection Act is not implicated in this case at all. This is a family dispute about money owed to Appellant by his brother

⁶² See, *Quinn v. Connelly*, 63 Wash.App. 733, 821 P.2d 1256 (1992).

⁶³ *Michael v. Mosquera-Lacy*, 165 Wash.2d 595, 602-603, 200 P.3d 695 (2009)[internal citations omitted].

who was the former owner of the Property. All of the facts and circumstances in this case are unique to these parties and were not done in the performance of Appellant's trade or business.

Appellant respectfully requests that the Court of Appeals overturn the grant of summary judgment in the favor of Respondents, reverse the award of damages for slander of title, unjust enrichment, and violation of the Consumer Protection Act and reverse the denial of Appellant's motion for summary judgment.

Dated this 12th day of October, 2016.

DEMCO LAW FIRM, P.S.



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DECLARATION OF SERVICE

I, Rosalie Mobley, state:

On this day I caused the foregoing Appellant's Reply Brief to be delivered by ABC Legal Messengers for delivery no later than October 14, 2016 to the Court of Appeals Division I. On this day I also caused the foregoing to be delivered via email and US Mail to:

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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 12th day of October, 2016 at Seattle, Washington.


Rosalie Mobley

COURT OF APPEALS DIV I
STATE OF WASHINGTON
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