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No. 1040776

Court of Appeals No. 578786 - II

IN THE SUPREME COURT FOR
THE STATE OF WASHINGTON

DOROTHY HELM,

Petitioners,

v.

KRISTYAN CALHOUN, et al,

Respondents.

ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT

Respondents, Thomas Parker and Susan Parker, were defendants in the Kitsap County trial court proceedings. The Parkers request this Court deny Ms. Helm's Petition for Review.

II. COUNTER-STATEMENT OF THE ISSUES

1. Whether the Court of Appeals decision involves an issue of substantial public interest when it decided that the claims against the Parkers were barred by RCW 11.125.190?
2. Whether the Court of Appeals decision involves an issue of substantial public interest that should be determined by the Supreme Court when, in determining there was not genuine issue of material fact to survive summary judgment, it applied Washington's longstanding legal framework for CR 56 motions?

III. STATEMENT OF THE CASE

The appellate decision correctly sets forth the relevant facts and procedure. As it relates to the Parkers, Ms. Helm's brought several claims against the Parkers that were dismissed on summary judgment. CP 302-303. The Court of Appeals affirmed. Ms. Helm's Petition for Review seeks review dismissal of the Consumer Protection Act claims and her claim that the Parkers took part in a breach of fiduciary duty. PR at 1 (Issue Presented for Review No. 1). The facts related to those claims will be addressed, briefly.

Mr. Parker has never met or spoken to Ms. Helm. CP 167. In December 2016 Ms. Calhoun received a power of attorney from Ms. Helm. CP 100. The Power of Attorney was acknowledged. CP 100; 176-182. There is no dispute the power of attorney was valid.

Ms. Calhoun previously worked with Mr. Parker using him as a real estate broker and selling him investment property. CP 102-106; 146-148; 150-153.

Ms. Calhoun contacted Mr. Parker about selling Ms. Helm's properties. CP 115-116. She told Mr. Parker she suspected drug activity, and there was a hostile tenant. CP 161. Mr. Parker referred her to a Kitsap County broker. CP 116-117.

After obtaining values for the properties from the Kitsap broker, Ms. Calhoun decided to sell Ms. Helm's two properties to fund her move to Yakima. CP 110. She listed the Rhapsody Drive property with the broker. CP 116-117.

Mr. Parker was in the area when Ms. Calhoun first went to the Rhapsody Drive property. He accompanied her. CP 118; 162. Ms. Calhoun did not tell him anything about why she was selling the property or the owner of the property's circumstances. CP 163.

There were many problems with the property. There was a drainfield smell and quite a few health and safety issues. CP 121. The tenant was not paying rent because there was no heat and other issues. CP 123. The tenant threatened to sue Ms. Calhoun for not providing a safe place to live. The place was “rough” inside with trash, [and] dirt. CP 121.

Mr. Parker made an offer to buy the property, but the offer was based on the concerns with the issues, including the threatened lawsuit. CP 124. He based the offer on the market analysis by the Kitsap County broker and offset it by the cost he was told was an estimate to remove the mobile home. CP 168-169. He first offered \$26,000.00 but Ms. Calhoun said it was too low. CP 170.

Ms. Calhoun accepted the \$28,000.00 written offer made by the Parkers. CP 125. She believed this to be fair market value. CP 127.

IV. REVIEW SHOULD BE DENIED

Review should be denied because Ms. Helm fails to meet the standards in RAP 13.4(b) for granting a petition for review. Under RAP 13.4(b), this Court will grant a petition for review only when certain criteria are met.

Ms. Helm identifies only RAP 13.4(b)(4) alleging that the petition involves an issue of substantial public interest. She has not met this standard.

Ms. Helm fails to show how Mr. Parker's purchase of real property based on Ms. Helm's undisputably valid power of attorney is of substantial public interest. She spends little time on this issue. She instead spends most of her argument regarding the Parkers recounting how the lower courts erred in granting summary judgment despite the "evidence" she presented. Review should be denied.

A. THE COURT OF APPEALS DECISION DOES NOT INVOLVE AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST.

1. The Parkers' reliance on a valid power of attorney under RCW 11.125.190 does not involve an issue of substantial public import.

A decision may justify review because it involves an issue of substantial public interest if it has the potential to affect a number of proceedings in the lower courts and will avoid unnecessary litigation and confusion on a common issue. *In re Flippo*, 185 Wn.2d 1032, 380 P.3d 413 (2016). Here, the appellate court determined that Mr. Parker relied on the valid power of attorney and owed no duty to Ms. Helm.

The appellate court's decision does not alter or change the legal framework for determining issues under the Consumer Protection Act. Rather, it merely addresses whether the particular facts of the present case are sufficient to raise a genuine issue of

material fact for trial. Ms. Helm has not shown the existence of a genuine issue of material fact, an issue that is highly fact specific in this unusual fact pattern, will affect a “number of proceedings in the lower courts.”

RCW 11.125.190 allows the Parkers to rely on the acknowledged power of attorney that Ms. Helm gave to Ms. Calhoun:

...A person that in good faith accepts an acknowledged power of attorney without actual knowledge that the power of attorney is void, invalid, or terminated, that the purported agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly exercising the agent's authority may rely upon the power of attorney as if the power of attorney were genuine, valid and still in effect, the agent's authority were genuine, valid and still in effect, and the agent had not exceeded and had properly exercised the authority.

Id.

Ms. Helm fails to address this statute – which controls the outcome, in her Petition.

There is no allegation Ms. Calhoun did not have authority.

There is no evidence that the Parkers were acting in bad faith.

While Ms. Helm alleges bad faith, the only evidence that of “bad faith” is the allegation that the sale was not for a reasonable price.

If the trial court erred, it erred in its evaluation of the evidence under CR 56 – not regarding an issue of substantial public import.

Ms. Helm states the issue:

[W]hether it was an unfair or deceptive act or practice for a professional fiduciary acting under a POA to sell her vulnerable principal’s property to the fiduciary’s friend for a price well below market value without consulting the principal.

PR at 6.

Under RCW 11.125.190, the Parkers had a right to rely on the undisputedly valid power of attorney. The Parkers purchase of the property, even if below market value, does not involve an issue of substantial public interest because the legislature has

codified the law in this area. Ms. Helm fails to address this statute that the Court of Appeals held controlled the outcome.

Ms. Helm also argues that the defendants' conduct "deprived other potential buyers of a fair opportunity to compete for the property."¹ PR 6.

But the property *was* listed for sale. It was undisputed that the property was exposed to the market. Ms. Calhoun listed the property with a broker. CP 117-118.

2. Ms. Helm's claim that there are disputed facts is not an issue of substantial public interest.

That Ms. Helm disagrees with the way the appellate court applied the law to the facts in reaching its determination that there is a genuine issue of material fact is not a proper basis for review.

¹ For this proposition, Ms. Helm cites to the dissent in *Sing v. John L. Scott, Inc.*, 134 Wn. 2d 24, 45-46, (1997) but note that this Court did not find a CPA violation in that case contrary to the dissent's arguments.

Part of the issue is that Helm argued, without presenting any evidence that the sale was far below “market value.” Mr. Parker believed this irrelevant because he relied on the valid power of attorney. But the undisputed evidence before the trial court on summary judgment was that the property has significant issues greatly affecting its value and marketability.

If the trial court (and appellate court) erred, they erred in interpreting the rules on summary judgment – not regarding the claim that Mr. Parker could not rely on the undisputably valid power of attorney given by Ms. Helm to Ms. Calhoun under RCW 11.125.190.

Ms. Helm’s argument for review is based on the premise that the Parkers bought the property for less than market value. In support she argues the trial and appellate courts erred in evaluating the evidence under the summary judgment standard.

PR 7-13.

She claims that “Helm responded to Parker’s motion with evidence to support the elements of her claims.” Id. at 9. She lists the evidence that supported her claims and then argues that “[o]n a motion for summary judgment, neither the trial court nor the Court of Appeals should have accepted Parker’s argument at face value....” Id. at 10. Even if this argument is correct, it is an error by the lower courts applying the standard on a CR 56 motion – not a question of substantial public interest.

Ms. Helm goes on to quote *Preston v. Duncan*² – that summary judgment should not be granted if, “they really have evidence they will offer at trial” PR at 12. citing *Preston*. She argues she “*really did have evidence.*” Id.

Because her argument advocating this court’s review is premised on the well-settled law of summary judgment, and that

² 55 Wn. 2d 678, 349 P.2d. 605 (1960).

the trial and appellate courts applied the CR 56 standard incorrectly, her argument that this is an issue of substantial public concern has no merit.

3. Whether the Parkers assisted in a breach of fiduciary duty is not an issue of public importance.

Ms. Helm complains that the Court of Appeals failed to apply *LaHue v. Keystone Inv. Co.*,³ and *Locke v. Andrasko*⁴ in dismissing the claim that the Parkers assisted in Ms. Calhoun breaching a fiduciary duty. Those cases hold that “a person who knowingly assists another in the commission of a tort, or who knowingly assists another in violating his fiduciary or trust obligation, is liable for losses proximately caused thereby.” *LaHue at 783.*

First, these cases pre-date RCW 11.125.190. Under the statute the Parkers had a right to rely on the power of attorney.

³ 6 Wn. App. 765, 783, 496 P.2d 343, 353 (1972).

⁴ 178 Wn. 145, 153, 34 P.2d 444 (1934)

Further, there is no evidence in the record (and certainly none cited by Ms. Helm) that the Parkers knew Ms. Calhoun was breaching a fiduciary duty to Ms. Helm. The statute only applies if the person relying on the power of attorney does so “in good faith.” *Id.* Here, there is no evidence of bad faith. And if there is evidence of bad faith, the trial and appellate court erred in applying CR 56, not regarding an issue of substantial public importance.

V. CONCLUSION

Ms. Helm fails to address the Court of Appeals’ reliance on RCW 11.125.190. It is dispositive. Ms. Helm’s arguments go to whether the Court of Appeals erred regarding the summary judgment standard *not* regarding an issue of substantial public importance.

Ms. Helm fails to address this statute’s application. Review should be denied.

*I certify that this memorandum contain 1904 words, in compliance with RAP 18.17. [up to 5000 allowed]**

RESPECTFULLY SUBMITTED this 2nd Day of June 2025.

/s/David P. Horton

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DECLARATION OF SERVICE

I Tracey Hamilton-Oril, the undersigned hereby declare under penalty of perjury under the laws of the State of Washington that the following statements are true and correct.

I am over the age of eighteen (18) years, not a party to this action and competent to be a witness herein. I caused the foregoing document to be served on the following parties the ECF filing system and email.

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

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