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2024 MAR 21 P 4:30
WHATCOM COUNTY
WASHINGTON

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR WHATCOM COUNTY

SCOTT HILLIUS, ET AL

Petitioner,

vs

18 PARADISE, LLP, ET AL

Respondent.

No. 20-2-00701-37

COURT'S DECISION RE: JOINT
MOTION FOR PARTIAL
SUMMARY JUDGMENT ON
PLAINTIFF'S CONSUMER
PROTECTION ACT CLAIM AND
MOTION TO DISMISS
DEFENDANTS WILLIAMS AND
O'BRYAN

Superior Court of the State of Washington

Hon. David Freeman, Dept. 4
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**Whatcom County
Courthouse**
311 Grand Avenue, Suite 501
Bellingham, Washington
98225

**Judge's Chambers and Courtroom
on 2nd floor**

March

RE: Scott Hillius, et al v. 18 Paradise, LLP, et al. 20-2-00701-37

Counsel-

This matter came before the Court on two motions. First, a renewed Joint Motion for Partial Summary Judgment on the Plaintiff's Consumer Protection Act (CPA) claim, and second, a Motion to Dismiss Defendant's Williams and O'Bryan. Having reviewed the briefing and heard oral argument the Court is prepared to decide both motions.

Initially, the Court is asked to determine whether the Plaintiffs can establish the public interest element of their CPA claim as a matter of law. As briefed extensively, the parties disagree as to the elements required to establish a public interest.

Defendant's apply the four-part test derived from Hangman Ridge Training Stables, Inc. v. Safeco Ins. Co., 105 Wn.2d 779 (1986). Pursuant to Hangman Ridge the Court considers,

1. Were the alleged acts committed in the course of defendant's business?
2. Did defendant advertise to the public in general?
3. Did defendant actively solicit this particular plaintiff, indicating potential solicitation of others?
4. Did plaintiff and defendant occupy unequal bargaining positions?

As briefed by the Plaintiff, RCW19.86.093 was amended in 2009. However, the Hangman Ridge test has not been expressly overruled, and in fact continues to be applied by Washington courts. See, Rush v. Blackburn, 190 Wash. App. 945, 969, 361 P.3d 217, 228 (2015).

Applying the Hangman Ridge test here, the plaintiff's claim must fail. While the Fifth Amended Complaint alleges actions taken in the course of Defendants' business, the three remaining factors are not met. The Defendants' did not advertise to the public in general. Nor, is there potential that the Defendant's would "solicit" others. The Defendant is correct that the Plaintiff Class represent a "captive audience," but this is based on their ownership of the property and the retained declarant rights in the original

master declaration. Finally, the parties were on equal bargaining positions as both the successor declarant and the homeowners both operated under the CCR's that ran with title. Purchasers were clearly provided notice of the reserved right of the declarant to amend the CCR's, and accepted that as condition to the title upon purchase. Consequently, the Court concludes that the Plaintiff's cannot establish the public interest element for this private action.

Alternatively, Plaintiff's argue that the Court should simply apply the provision of RCW 19.86.093. Subsection three of the statute provides that a plaintiff may establish a public interest in a private transaction if the act, "(3)(a) Injured other persons; (b) had the capacity to injure other persons; or (c) has the capacity to injure other persons." As discussed previously, the action at issue was between a fixed set of participants. The original declarant had the ability to, and did in fact reserve the right to amend covenants. *See generally, Lakemoor Country Club, Inc. v. Swanson*, 24 Wn. App 10 (1979). The filing of the original Master Declaration and CCR's provided potential landowners notice of the reservation of authority by the Declarant. *See, Mohandessi v. Urb. Venture LLC*, 13 Wn. App. 2d 681, 696, (2020). Moreover, each subsequent recording of the respective amendments also provided notice to prospective purchasers. As such, the allegations contained in the Fifth Amended Complaint as to the reasonableness of the Sixth and Seventh Amendments involve a fixed set of parties, i.e., those individuals with an ownership interest at the time of the amendments. Subsequent purchasers may be impacted by the rise in fees but, they do so with notice and acceptance as to those terms at the time of purchase. Consequently, the Plaintiff's claim also fails under a strict statutory reading of RCW 19.86.093.

Plaintiff's responsive briefing regarding the Motion to Dismiss Defendant's Williams and O'Bryan rests exclusively on its contention that a CPA violation is a per se trigger to individual liability. As the Court is dismissing the CPA claim it need not reach the issue of whether a CPA claim triggers a piercing of the corporate veil. As such, the Court grants MJ Management's motion to dismiss William's and O'Bryan individually.

Sincerely,



David Freeman
Superior Court Judge