

JUL 17 2013

FILED

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR BENTON COUNTY

STATE OF WASHINGTON,

No. 13-2-00871-5

Plaintiff

v.

ARLENE'S FLOWERS, INC., d/b/a
ARLENE'S FLOWERS AND GIFTS, and
BARRONELLE STUTZMAN,

Order

Third Party Plaintiffs

v.

ROBERT W. FERGUSON, in his official
Capacity as ATTORNEY GENERAL for the
STATE OF WASHINGTON,

Third-Party Defendant.

COPY

THIS MATTER, having come before the Court on June 28, 2013 and on July 17, 2013 on
motions of the parties wherein the Court heard arguments on the following three outstanding
issues: 1) whether the Court should grant Plaintiff's motion to strike Defendant's affirmative

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1 defenses; 2) whether the Court should grant Plaintiff's motion to dismiss "Third Party"
2 complaint; and 3) whether the Court should grant the defense motion to join Attorney General
3 Ferguson under Civil Rule 20.
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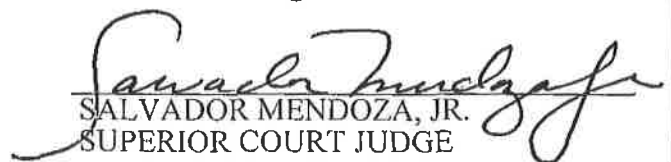
5 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that
6 the Plaintiff's motion to strike affirmative defenses is denied, the Plaintiff's motion to dismiss
7 the "Third Party" complaint is granted, and the Defendant's motion to join is denied. What both
8 parties have essentially asked this Court to do is to overlook the Superior Court Civil Rules (CR).
9 In reviewing the arguments of counsel, I'm reminded by the testimony of Justice Sonia
10 Sotomayor in her confirmation hearings, "The job of a judge is to apply the law. And so it's not
11 the heart that compels conclusions in cases, it's the law." (Hearings on the Nomination of Justice
12 Sonia Sotomayor to be an Associate Justice of the U.S. Supreme Court, 111th Cong. (July 14,
13 2009)). Thus, while I think both sides have compelling argument as to why one or the other
14 wants to side step the rules, the Court is not inclined to do so. The Plaintiffs have asked this
15 Court to overlook their late filing in violation of CR 12. The Defendants have asked this Court
16 to overlook their improper filing of the "Third Party Complaint" in violation of CR 14. This
17 Court chooses to hold both parties accountable to the rules.
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20 First, the State's motion to strike affirmative defenses fails because their motion does not
21 comply with CR 12. Here, the Defendant's challenge the Plaintiff's motion as untimely. As
22 detailed by the Defendants in this case, the rule requires the Plaintiffs to file their affirmative
23 defenses within 20 days. The Plaintiffs failed to comply with the 20 day rule because they filed
24 the motion to strike on the 23rd day. Even a more generous reading of the rule would still put the
25 time outside of the 20 day limit. As such, the Court will deny the State's motion to strike
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1 affirmative defenses. The Court is not making a decision on the merits of the motion to strike the
2 affirmative defenses nor prohibiting the State from filing the appropriate additional CR 12
3 motions, their CR 56 summary judgment motion, or other motions if they see fit at a later time.
4 However, under the facts and procedural history presented to the Court, the State's motion must
5 fail.
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7 Likewise, the Defendant's "Third Party Complaint" fails to meet the requirements of CR
8 14. Here, Defendants filed a "Third Party Complaint" adding Attorney General Ferguson as a
9 third party defendant. As expressed in the hearing on the matter, the Court was puzzled by the
10 filing as it didn't seem to comply with CR 14. After careful consideration of the parties briefing
11 and the motion to join under CR 20, the Court will deny the motion to join and grant the motion
12 to dismiss *without prejudice*. There is nothing in the Court's ruling that prevents the Defendants
13 from filing their 42 U.S.C. §1983 claim against Attorney General Ferguson in another action.
14 This Court will consider the motion to join if and/or when the case and that motion are properly
15 before the Court. The Court appreciates the arguments on judicial economy. However, both
16 parties have argued the importance of this case. It is the foundation of the case that would be
17 unsteady if the Court were to begin the case by ignoring the rules and thereby allowing the
18 motion to join and granting the motion to strike affirmative defenses. This Court will not do that.
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22 DONE BY THE COURT this 17 day of July, 2013.

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25 SALVADOR MENDOZA, JR.
26 SUPERIOR COURT JUDGE

OCT 08 2013

FILED *9/9*

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR BENTON COUNTY

STATE OF WASHINGTON,

Plaintiff

v.

ARLENE'S FLOWERS, INC., d/b/a
ARLENE'S FLOWERS AND GIFTS, and
BARRONELLE STUTZMAN,

Defendants,

ROBERT INGERSOLL and CURT FREED,

Plaintiffs,

v.

ARLENE'S FLOWERS, INC., d/b/a
ARLENE'S FLOWERS AND GIFTS, and
BARRONELLE STUTZMAN,

Defendants.

No. 13-2-00871-5
(Consolidated with 13-2-00953-3)

Opinion
and
Order of the Court

THIS MATTER having come before the Court on October 4, 2013, on motion by
Defendant Arlene's Flowers for partial summary judgment challenging the Consumer Protection

1 Act (CPA) claim made by Plaintiffs Ingersol and Freed; and the Court having considered the
2 briefing and declarations in support of their respective motions;

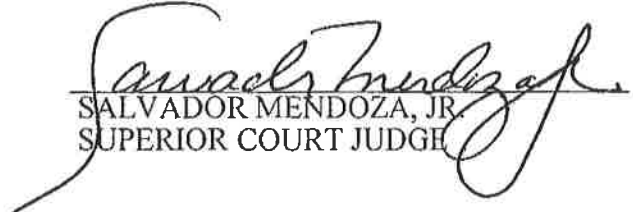
3 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that
4 the Defendants motion is denied. To prevail on a private CPA claim, the Washington Supreme
5 Court has laid out clear guidance indicating that the following five factors must be proven by the
6 plaintiff, "... (1) an unfair or deceptive act or practice, (2) occurring in trade or commerce, (3)
7 affecting the public inters, (4) injury to a person's business or property, and (5) causation."

8 Hangman Ridge Stables, Inc. v. Safeco Title Ins. Co., 105 Wash.2d 778, 784 (1986). The
9 Washington Law Against Discrimination (WLAD) indicates that, "...any unfair practice
10 prohibited by this chapter which is committed in the course of trade or commerce as defined in
11 the Consumer Protection Act, chapter 19.86 RCW, is for the purposes of applying the chapter, a
12 matter affecting the public interest, is not reasonable in relation to the development and
13 preservation of business and is an unfair or deceptive act in trade and commerce." RCW
14 49.60.030(3). Discrimination on the basis of sexual orientation is a violation of the WLAD,
15 49.60.030(1).

16 Here the Plaintiffs argue that the violation of the WLAD satisfies the requirements as set
17 out in Hangman Ridge. This Court does not agree. The Washington Supreme Court recently
18 addressed the issue in Panag v. Farmers Ins. Co. of Wash., 166 Wn.2d 27 (2009). The Court
19 indicated, "...plaintiff's injury, the fourth element, is an element distinct from occurrence of a
20 violation in trade or commerce...". Id. at 45. Thus, while the Plaintiffs have satisfied the first
21 three elements of Hangman Ridge, they must also satisfy the fourth (injury) and fifth (causation)
22 elements. Toward that end, the Plaintiffs argue that they have established an injury sufficient to
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1 support a CPA claim. Among other things, Plaintiffs indicate that the expenses associated with
2 the wasted travel to and from Arlene's (gas and mileage) and the costs associated with selecting a
3 new florist are a sufficient basis to meet the injury element of Hangman Ridge. While this injury
4 may be minor in terms of actual quantifiable dollars, the case law establishes that these losses
5 occasioned by the inconvenience of having to obtain a different florist and the cost of gas and
6 mileage are sufficient to meet the injury element for a CPA claim. Moreover, at this stage of the
7 proceeding, where the Court must view the facts in a light most favorable to the non-moving
8 party, this Court concludes that the fourth and fifth elements as required by Hangman Ridge are
9 established. As such, the Defendant's Motion for Partial Summary Judgment is denied.
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12 DONE BY THE COURT this 7 day of October, 2013.
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16 SALVADOR MENDOZA, JR.
17 SUPERIOR COURT JUDGE
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CERTIFICATE OF MAILING

I hereby certify that on the 7th day of October, 2013, I caused to be delivered the following document(s) by US Mail, E-Mail, Hand-Delivery **OR** Inter-City Legal Processing & Messenger Service.

CASE NUMBER: 13-2-00871-5

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Administrative Assistant

JOSIE DELVIN
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DEC 17 2013

FILED

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR BENTON COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

ARLENE'S FLOWERS, INC., d/b/a
ARLENE'S FLOWERS AND GIFTS; and
BARRONELLE STUTZMAN,

Defendants.

No. 13-2-00871-5
(Consolidated with No. 13-2-00953-3)

Amended Oct 7, 2013 Opinion
and
Order of the Court

ROBERT INGERSOLL AND CURT FREED,

Plaintiffs,

V.

ARLENE'S FLOWERS, INC., D/B/A
ARLENE'S FLOWERS AND GIFTS; AND
BARRONELLE STUTZMAN,

Defendants.

COPY

THIS MATTER having come before the Court on October 4, 2013, on motion by
Defendant Arlene's Flowers for partial summary judgment challenging the Consumer Protection

1 Act (CPA) claim made by Plaintiffs Ingersoll and Freed; and the Court having considered the
2 briefing and declarations in support of their respective motions, including the following:

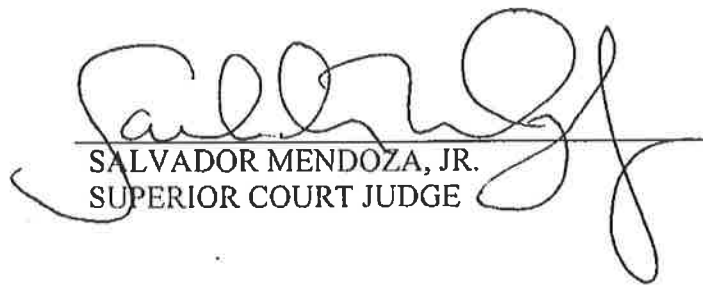
- 3 1. Defendants' Motion for Partial Summary Judgment on CPA Claim by
4 Ingersoll and Freed;
- 5 2. Defendants' Memorandum of Authorities in Support of Partial Summary
6 Judgment on CPA Claim by Ingersoll and Freed;
- 7 3. Declaration of Alicia M. Berry in support of Defendants' Motion for Partial
8 Summary Judgment on CPA Claim by Ingersoll and Freed;
- 9 4. Declaration of Barronelle Stutzman in Support of Defendants' Motion for
10 Partial Summary Judgment on CPA Claim by Ingersoll and Freed;
- 11 5. Plaintiffs Robert Ingersoll and Curt Freed's Opposition to Defendants' Motion
12 for Partial Summary Judgment on CPA Claim by Ingersoll and Freed;
- 13 6. Declaration of Curt Freed in Support of Opposition to Defendants' Motion for
14 Partial Summary Judgment on CPA Claim by Ingersoll and Freed;
- 15 7. Declaration of Robert Ingersoll in Support of Opposition to Defendants'
16 Motion for Partial Summary Judgment on CPA Claim by Ingersoll and Freed;
- 17 8. Defendants' Reply to Plaintiffs' Opposition to Defendants' Motion for Partial
18 Summary Judgment on CPA Claim by Ingersoll and Freed.

19 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that
20 the Defendants' motion is denied. To prevail on a private CPA claim, the Washington Supreme
21 Court has laid out clear guidance indicating that the following five factors must be proven by the
22 plaintiff, " ... (1) an unfair or deceptive act or practice, (2) occurring in trade or commerce,
23 (3) affecting the public interest, (4) injury to a person's business or property, and (5) causation."
24 Hangman Ridge Stables, Inc. v. Safeco Title Ins. Co., 105 Wash.2d 778, 784 (1986). The
25 Washington Law Against Discrimination (WLAD) indicates that, " ... any unfair practice
26 prohibited by this chapter which is committed in the course of trade or commerce as defined in
27
28

1 the Consumer Protection Act, chapter 19.86 RCW, is for the purposes of applying the chapter, a
2 matter affecting the public interest, is not reasonable in relation to the development and
3 preservation of business and is an unfair or deceptive act in trade and commerce."
4
5 RCW 49.60.030(3). Discrimination on the basis of sexual orientation is a violation of the
6 WLAD. 49.60.030(1).

7 Here the Plaintiffs argue that the violation of the WLAD satisfies the requirements as set
8 out in Hangman Ridge. This Court does not agree. The Washington Supreme Court recently
9 addressed the issue in Panag v. Farmers Ins. Co. of Wash., 166 Wn.2d 27 (2009). The Court
10 indicated, " ... plaintiffs injury, the fourth element, is an element distinct from occurrence of a
11 violation in trade or commerce ... ". Id. at 45 . Thus, while the Plaintiffs may satisfy the first three
12 elements of Hangman Ridge by establishing a violation of the WLAD, they must also satisfy the
13 fourth (injury) and fifth (causation) elements. Toward that end, the Plaintiffs argue that they have
14 established an injury sufficient to support a CPA claim. Among other things, Plaintiffs indicate
15 that the expenses associated with the wasted travel to and from Arlene's (gas and mileage) and the
16 costs associated with selecting a new florist are a sufficient basis to meet the injury element of
17 Hangman Ridge. While this injury may be minor in terms of actual quantifiable dollars, the case
18 law establishes that these losses occasioned by the inconvenience of having to obtain a different
19 florist and the cost of gas and mileage, if proven to the trier of fact, may be sufficient to meet the
20 injury element for a CPA claim. Moreover, at this stage of the proceeding, where the Court must
21 view the facts in a light most favorable to the non-moving party, this Court concludes that the
22 facts are sufficient to defeat Defendants' Motion for Partial Summary Judgment. As such, the
23 Defendants' Motion for Partial Summary Judgment is denied.
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1 DONE BY THE COURT this 16 day of December, 2013.

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6 SALVADOR MENDOZA, JR.
7 SUPERIOR COURT JUDGE
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JAN 27 2014
FILED *4*

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR BENTON AND FRANKLIN COUNTIES

INGERSOLL, ROBERT .et al	)	
	)	
	)	Case No. 13-2-00953-3
Plaintiff(s),	)	1st Amended
	)	CIVIL CASE SCHEDULE ORDER
v.	)	(ORACS)
ARLENE'S FLOWERS INC .et al	)	
	)	
Defendant(s).	)	

I. SCHEDULE

	DUE DATE
1 Cancellation/Confirmation of Status Conference	02/03/2014
2 Last Date for Filing Motions to Change Trial Date	03/03/2014
3 Status Conference (telephonic)	03/06/2014
4 Plaintiff's Disclosure of Lay and Expert Witnesses	03/03/2014
5 Defendant's Disclosure of Lay and Expert Witnesses	04/28/2014
6 Disclosure of Plaintiff's Rebuttal Witnesses	05/12/2014
7 Disclosure of Defendant's Rebuttal Witnesses	05/27/2014
8 Discovery Completed	08/04/2014
9 Last Date for Filing Statement of Arbitrability	08/04/2014
10 Last Date for Filing Jury Demand	08/18/2014
11 Settlement Position Statements filed by all parties	08/18/2014
12 Last Date for Filing Dispositive Pretrial Motions	08/18/2014
13 Settlement Conference (in person)	09/04/2014
14 Last Date for Filing and Serving Trial Management Report	09/29/2014
15 Pretrial Management Conference (in person)	10/02/2014
16 Trial Memoranda and Motions In Limine to be filed	09/29/2014
17 Trial Date and Motions in Limine	10/13/2014

II. ORDER

IT IS ORDERED that all parties comply with the foregoing schedule.

Dated this 24th day of January, 2014.

SALVADOR MENDOZA, JR.
SUPERIOR COURT JUDGE