

NO. 63111-0-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JOSEPH KAISER and HEIDI M. KAISER, husband and wife, G. HOBUS
INVESTMENTS, LLC; BOBO BUYS REAL ESTATE, LLC; PRE FLOP
LLC; and UNCLAIMED FUNDS, INC., a Washington Corporation,

Appellants.

REPLY BRIEF OF APPELLANTS

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I. INTRODUCTION

The State of Washington surely only brings actions under the Consumer Protection Act (“CPA”) when it believes itself to be in the right. However, the State’s belief in the virtue of its cause is not enough to entitle it to prevail in a court of law. To properly win judgment against a citizen or business accused of violating the CPA, the State has to show that the defendant committed an unfair or deceptive act or practice in trade or commerce, and that the act or practice affected the public interest. It has to meet this burden for each alleged violation. In its case against Appellants Joseph and Heidi Kaiser and various businesses under their control (henceforth “Kaiser”), the State failed to carry its burden for many of the violations it alleged, and the trial court erred in concluding otherwise. Accordingly, this Court should reverse the trial court and remand the matter for further proceedings.

II. ARGUMENT IN REPLY

The trial court decided Kaiser’s liability in two stages. First, it issued an Order Granting Plaintiff’s Motion for Partial Summary Judgment (“Order on Summary Judgment”) which concluded that Kaiser committed 23 or 24 different types of CPA violation. CP 1035-1040.¹ Second, after a bench trial, the trial court entered Findings of Fact and Conclusions of Law (“Findings and Conclusions”) that found additional CPA violations relating to Kaiser’s “partial interest” transactions and

¹ The number of different types of violation found by the Order on Summary Judgment is unclear. See *Opening Brief of Appellant (“Appellants’ Brief”)*, p. 30, n. 20.

“four other deals.” CP 1276-1284. The multiplicity of alleged violations, and the fact that some were found at summary judgment and others after a bench trial, gives Kaiser’s argument on appeal an unavoidable degree of complexity. However, underlying all of Kaiser’s arguments are two basic points. First, at the State’s invitation, the trial court reached numerous mistaken conclusions of law, both at summary judgment and at trial. Second, on summary judgment, the trial court improperly resolved material questions of fact against Kaiser. Both of these types of error necessitate reversal and remand.

1. Arguments specific to the Order on Summary Judgment

a. Summary Judgment is not proper if the moving party is not entitled to judgment as a matter of law

Summary judgment should be granted only if there is no genuine issue of material fact “and . . . the moving party is entitled to judgment as a matter of law.” *CR 56(c)* (underlined emphasis added); *see also Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). In the *Opening Brief of Respondent* (“*Respondent’s Brief*”), the State incorrectly suggests that summary judgment is only improper if there are genuine issues of material fact. *Respondent’s Brief*, pp. 8-10. Although Kaiser has shown that there are genuine issues of material fact that should have prevented summary judgment, he has also argued that the trial court’s Order on Summary Judgment rested on erroneous conclusions of law. *Appellants’ Brief*, pp. 13-15, 36-38, 38-39, 41-42. This Court performs a *de novo* review of questions of law that arise at summary judgment. *Syrovoy v.*

