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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 No. 13-2-00953-3)

Amended Oct 7, 2013 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 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
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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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DONE BY THE COURT this 16 day of December, 2013.



SALVADOR MENDOZA, JR.
SUPERIOR COURT JUDGE