

HONORABLE RONALD B. LEIGHTON

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

HENRY "TOM" and LISSA LEBBENS,
and their marital community, and THE
ESTATE OF ELIZABETH
FORRESTER,

Plaintiffs,

v.

BOB GREEN SALES ASSOCIATES,
INC. d/b/a PARK AVENUE
NUMISMATICS, et al,

Defendants.

CASE NO. C12-5142RBL

ORDER DENYING DEFENDANTS'
SUMMARY JUDGMENT

THIS MATTER is before the Court on Defendants Greenbergs and Bob Green Sales Associates' Motion for Summary Judgment [Dkt. #52]. The Court has reviewed the materials filed in support of, and opposition to, the motion, including the competing motions to strike. For the following reasons the Motion for Summary Judgment [Dkt. #52] is **DENIED** and the Motion to Strike embedded in the parties' memoranda are likewise **DENIED**.

This case is about the sizeable loss suffered in the speculative gold coin market and the reasons for those losses suffered by plaintiffs. Tom and Lissa Lebens filed suit against the moving defendants and others who are not involved in this motion (Ernest English and spouse

1 and Carlos Cabrera and spouse) asserting claims of conspiracy, fraud, negligent
2 misrepresentation, unjust enrichment, breach of fiduciary duty and violations of the Consumer
3 Protection Act. Defendants allege that plaintiffs cannot meet their burden of proof with
4 admissible evidence. The Court disagrees.

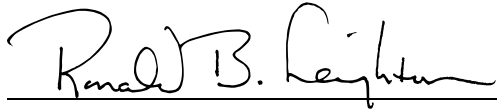
5 Plaintiffs invested through Ernest English for three years. They had acquired a portfolio
6 of some 150 coins. English was in the process of moving from one employer (Blanchard) to his
7 co-defendant's employ (Bob Green Sales Associates d/b/a Park Avenue Numismatics). A deal
8 was structured by which the Lebens would exchange their existing portfolio (150 coins) for two
9 undesigned rare coins and some cash (\$50,000 v. \$35,000). Moving defendants selected the
10 two rare coins. Cabrera came to Washington to deliver the two rare coins and a check for
11 \$35,000. At the same time he inventoried the portfolio and took possession of it. Plaintiffs
12 claim that Greenberg valued their portfolio (150 coins) at between \$198,000 to \$205,000. The
13 two rare coins traded in exchange were, at the time, valued at \$54,000. The total value of the
14 two rare coins and the cash was \$89,000.

15 Without more, plaintiffs have asserted a prima facie case of fraud involving all of the
16 defendants including the moving parties. The plaintiffs are entitled to tell their story to a jury.
17 The claims that go to the jury will be decided in the jury instructions. The factual circumstances
18 of the transaction(s) will not change by trimming claims at this time.

19 As for the Motion to Strike, the Court has reviewed the objectionable material and has
20 decided the motion on the merits as they are presented in the papers. Credibility is everything in
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1 this case. Credibility of the witnesses is a matter to resolve by the jury. Defendants Greenbergs
2 and Bob Green Sales Associates' Motion for Summary Judgment [Dkt. #52] is **DENIED**.

3 Dated this 30th day of August, 2013.

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5 RONALD B. LEIGHTON
6 UNITED STATES DISTRICT JUDGE