

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

HOUSING AUTHORITY OF THE)	
CITY OF SEATTLE,)	No. 65292-3-I
)	
Respondent,)	DIVISION ONE
)	
v.)	UNPUBLISHED OPINION
)	
MOHAMED ADEN (a/k/a Maden)	
Mohamed, Mohamed M. Aden), and)	
FADUMA ALI (a/k/a Fadumo Moalim)	
Ali, Faduam M. Ali, Fadumo M. Ali,)	
Fadumo Ali, Iadumo M. Ali, and Iadumo)	
Ali), individually, and as a marital)	
community composed thereof,)	
)	
Appellants,)	
)	
and)	
)	
CRESCENT CUSTOM)	
SLAUGHTERING, INC., a Washington)	
corporation, and 21 st CENTURY BASIC)	
HUMAN SERVICES, a Washington)	
non-profit corporation,)	
)	
Defendants.)	FILED: June 13, 2011

Grosse, J. — A claim for fraud is sufficient under CR 9(b) if it identifies the circumstances constituting fraud and the role of each defendant in the fraud, and explains why a statement or omission complained of was false or misleading. Husband and wife Mohamed Aden and Faduma Ali (collectively Aden) received a housing subsidy from Seattle Housing Authority (SHA),¹ but failed to report their household

income as required. After SHA commenced this action for fraud and breach of contract, Aden twice moved unsuccessfully to dismiss SHA's complaint under CR 9(b) for failing to plead fraud with specificity. Trial resulted in a judgment in SHA's favor. The trial court did not err in denying Aden's motions to dismiss. Aden's challenges to the findings of fact and conclusions of law also fail. We affirm.

FACTS

Aden was awarded a Section 8 housing voucher in 1998. As a result, he received a monthly housing subsidy from SHA. The amount paid by SHA was based in part on the reported income of all household members.

Annually, the household was required to submit personal declarations to SHA, signed under penalty of perjury, listing all income earned by every household member in the 90 days before submission. Each contained the following language:

I certify under penalty of perjury that I have completed all of the above information to the best of my knowledge and that it is true and correct. I also understand that any change for my household members must be reported to the Seattle Housing Authority in writing within ten (10) days of the change.

Aden was also required to comply with HUD and SHA requirements, which included the obligation to report any increase in income.

Between 1999 and 2004, Mohamed and Faduma claimed less income than they earned, according to Washington State Employment Security Department (ESD) data.²

¹ SHA is a public housing authority. It administers the Housing Choice Voucher program in the city of Seattle. The Housing Choice Voucher program is a Section 8 housing program, subsidized by the United States Department of Housing and Urban Development (HUD), and is subject to regulations adopted by HUD.

² Faduma submitted four affidavits to SHA between July 1999, and September 2002, in which she claimed that she did not earn any income. ESD records showed that she

As a result, SHA did not re-calculate their monthly rent subsidy, and paid approximately \$37,000 between the third quarter of 2002 and the first quarter of 2005.

In 2005, SHA received an anonymous tip that Aden was earning unreported income. SHA investigated the claim and learned that members of the household were involved in a business. SHA wrote to Mohamed on December 14, 2005, requesting that he appear for a conference with SHA and provide copies of his income tax records and bank statements for 1999 through 2005. Mohamed appeared at the conference on December 27, 2005, but failed to produce his financial documents. SHA terminated the household's participation in the Housing Choice Voucher program effective February 28, 2006.

SHA commenced this action against Aden, asserting claims for fraud, negligent misrepresentation, breach of contract, and violation of terms of the Housing Choice Voucher program. Aden asserted a counterclaim for intentional interference with contractual relations and business expectations.

Following a bench trial, the court concluded that Aden's failure to report increases in income was fraudulent and breached the agreement with SHA and obligations under the Section 8 program requirements. The court also concluded that Aden failed to make a prima facie case that SHA intentionally interfered with any

earned \$1,021 in the third quarter of 2002 and \$852 in the fourth quarter.

In January 2003, the household reported Mohamed's monthly income as \$540, and Faduma's as \$284. ESD records showed that Mohamed earned \$9,750 in each of the second, third, and fourth quarters of 2003, and Faduma earned \$1,267 in the third quarter and \$1,647 in the fourth quarter.

In January 2004, the household reported Mohamed's monthly income as \$574. ESD records showed that Mohamed earned \$6,500 in the first quarter, \$13,500 in the second quarter, and \$10,500 in both the third and fourth quarters.

contractual relationships or business expectations. The court entered judgment in favor of SHA in the amount of \$37,267.

Aden appeals.

ANALYSIS

I. Motion to Dismiss

Aden asserts that the trial court erred in denying his motions to dismiss the original and amended complaint for failure to allege fraud with the specificity CR 9(b) requires. We disagree.

Under CR 9(b), in all averments of fraud the circumstances constituting fraud shall be stated with particularity. Malice, intent, knowledge, and other conditions of mind may be averred generally. A complaint adequately alleges fraud if it informs the defendant of who did what, and describes the fraudulent conduct and mechanisms.³ A motion to dismiss under CR 9(b) for failure to plead with particularity is the functional equivalent of a CR 12(b) motion to dismiss for failure to state a claim.⁴ We review such a motion de novo, presuming the truth of a plaintiff's allegations and drawing all reasonable inferences in their favor.⁵

The amended complaint alleged the fraud as follows:

As a result of their failure to truly and completely report their income for the years 2000, 2001, 2002, 2003, 2004 and 2005, the Defendants Aden

³ Haberman v. Washington Public Power Supply System, 109 Wn.2d 107, 165-166, 744 P.2d 1032 (1987); see also Neubronner v. Milken, 6 F.3d 666, 671-72 (9th Cir. 1993) (A pleading under Fed. R. Civ. Pro. 9(b) is sufficient if it identifies the circumstances constituting fraud so that the defendant can prepare an adequate answer from the allegations.).

⁴ See Vess v Ciba-Geigy Corp. USA, 317 F.3d 1097, 1107 (9th Cir. 2003) (applying corresponding federal rules).

⁵ Burton v. Lehman, 153 Wn.2d 416, 422, 103 P.3d 1230 (2005); see Haberman, 109 Wn.2d at 120.

and Ali received excess subsidy in the total sum of \$93,582.00 or such other amount as proved at trial.

....

Defendants Aden and Ali made representations of fact to SHA concerning their income. These representations of fact were material to SHA's determination of whether the Defendants were entitled to housing subsidies and, if so, the amount of such subsidies. The representations of fact made by the Defendants concerning their income were false, the Defendants knew they were false, and the Defendants intended SHA to act upon their false representations. SHA did not know that the representations were false and relied upon the false representations in making its determinations about whether the Defendants were entitled to housing subsidies and, if so, the amount of the subsidies. SHA was entitled to rely upon Defendants' representations concerning their income. As a result, SHA was damaged by the payment of subsidized housing assistance through the Section 8 Program on the behalf of the Defendants to which the Defendants were not entitled. The Defendants' representation to SHA of information about their income that was not true and complete [. . .] constitutes fraud.

Aden argues that the complaint was inadequate because it failed to specify "the time, place, and contents of the misrepresentation," and was "devoid of any specificity as to when, where, how and in what amounts defendants obtained any sums of unreported income."⁶ However, the amended complaint adequately explained that Mohamed and Faduma obtained a Section 8 housing voucher, received income that they failed to report to SHA as required, and received excess housing subsidies from 2000 through 2005 as a result. Each defendant's role was explained, and the fraud alleged was plainly identified as the misrepresentations to SHA regarding household income for 2002 through 2004. Aden was adequately apprised of the nature of the alleged fraud, and was in a position to prepare an adequate answer to the claim.

⁶ Aden relies on Bender v. Southland Corp., 749 F.2d 1205, 1216 (6th Cir. 1984) (requiring fraud allegations to include time, place, and contents of every statement comprising fraud). But the controlling standard is that articulated by our Supreme Court in Haberman, 109 Wn.2d at 165-166.

The trial court did not err in concluding that the complaint was sufficiently specific to survive the motions to dismiss.⁷

II. Findings of Fact and Conclusion of Law

Aden also asserts that the trial court erred in entering multiple findings of fact and conclusions of law. We disagree.

We review the trial court's findings of fact to determine whether they are supported by substantial evidence.⁸ Unchallenged findings of fact are verities on appeal.⁹ “We review the trial court's conclusions of law de novo to see if they are supported by the trial court's findings of fact.”¹⁰

Although Aden assigns error to findings of fact 21 and 22, he does not address the evidentiary record or explain why the findings are erroneous. The assignment of error is therefore waived. Even absent waiver, the record and the unchallenged findings of fact, particularly findings of fact 12, 13, and 14, provide an ample evidentiary basis supporting the challenged findings.

Aden's assignments of error to conclusion of law 1 through 3 and 7 through 8 are similarly unavailing. The trial court's findings of fact, including the unchallenged findings, amply support its conclusions of law.

Finally, Aden's argument that trial court's calculation of damages was not supported by the evidence is not persuasive. Evidence sufficiently proves damages when it affords a reasonable basis for estimating the loss and does not subject the trier

⁷ Haberman, 109 Wn.2d at 120, 165-66.

⁸ Bingham v. Lechner, 111 Wn. App. 118, 127, 45 P.3d 562 (2002).

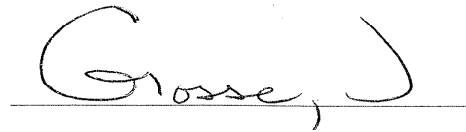
⁹ State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994); Tomlinson v. Clarke, 118 Wn.2d 498, 501, 825 P.2d 706 (1992).

¹⁰ Bingham, 111 Wn. App. at 127.

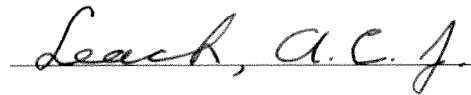
of fact to mere speculation or conjecture.¹¹ Mathematical certainty is not required, and a fact finder has discretion to award damages that are within the range of competent evidence in the record.¹² Here, the trial court based its \$37,267 damage calculation on evidence that SHA paid \$8,850 for the third and fourth quarters of 2002, \$13,763 for the second, third, and fourth quarters of 2003, \$8,066 for the second, third, and fourth quarters of 2004, and \$6,615 for 2005. The trial court's damage calculation was entirely reasonable based on the evidence.

The trial court's findings of fact support the conclusions of law, and are supported by the evidentiary record.

We affirm.

Handwritten signature of Grosse, J. in cursive script, written over a horizontal line.

WE CONCUR:

Handwritten signature of Jan, J. in cursive script, written over a horizontal line.Handwritten signature of Leach, a.c.j. in cursive script, written over a horizontal line.

¹¹ Interlake Porsche & Audi, Inc. v. Bucholz, 45 Wn. App. 502, 510, 728 P.2d 597 (1986).

¹² Mason v. Mortgage Am., Inc., 114 Wn.2d 842, 850, 792 P.2d 142 (1990).