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Washington State
Court of Appeals
Division Two

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

PAULA STEVEN, Appellant, v. DENNIS SCHROADER, JR., and JANE DOE SCHROADER, husband and wife; and SCHROADER LAW, PLLC, a WASHINGTON professional limited liability company doing business as the LAW OFFICE OF DENNIS SCHROADER, Respondents.	No. 54432-6-II UNPUBLISHED OPINION

CRUSER, J.—Paula Steven appeals the trial court's order granting summary judgment in favor of Dennis Schroader, Jr. and dismissing all claims against him with prejudice. Steven argues that the trial court erred by ruling she was collaterally estopped from suing Schroader for legal malpractice and that genuine issues of material fact remain regarding the causation and damages elements of her legal malpractice claim. She also argues that the trial court erred by dismissing her claim under Washington's Consumer Protection Act (CPA), chapter 19.86 RCW.

The trial court ruled that regardless of whether these issues had previously been litigated, Steven failed to show that Schroader breached a duty that resulted in harm, and it granted summary judgment on that basis. Even assuming the issues Steven raises are not precluded, and even

viewing the evidence in the light most favorable to her, Steven fails to show a genuine issue of material fact with respect to either her legal malpractice claim or her CPA claim. Therefore, we affirm.

FACTS

I. BACKGROUND

Steven rented a home in Auburn in 2001. In 2013, the property was sold to FREO Washington, LLC (FREO) and placed in the control of Brink Property Management (Brink).

Steven reported several issues with the property after this change in management. In March 2014, the King County Department of Permitting and Environmental Review found Brink to be in violation of a property maintenance code that resulted in a "[s]ubstandard dwelling." Clerk's Papers (CP) at 838. In May 2014, Steven submitted a complaint to the Seattle-King County Department of Public Health regarding sewage backup that led to the pump being replaced. In December 2014, Steven filed a fair housing complaint with the King County Office of Civil Rights & Open Government (OCROG) and the United States Department of Housing and Urban Development, alleging that FREO "discriminated against her by subjecting her to different terms and conditions of rental due to her race" and detailing various issues with rent payments and

repairs. *Id.* at 973. This complaint was investigated throughout 2015 and formally resolved in June 2016.[1]

In a letter dated December 9, 2015, Brink advised Steven that it would be selling her home and that Steven could either purchase the home or vacate it when her lease expired on January 31, 2016. Steven initially expressed interest in purchasing the home, and she requested additional time to consider the offer before vacating.

Steven also raised concerns to Brink about "retaliatory issues." *Id.* at 1798. Brink assured Steven, "The owners have decided to sell the homes that have not been rehabbed and that have leases expiring . . . You are not being singled out here." *Id.* at 851. In the same letter, Brink extended Steven's tenancy to February 29, 2016. After her lease expired on January 31, Steven began to rent the property on a month-to-month basis, pending a decision on whether she would purchase the home.

In February, Steven's tenancy was extended to March 31. In March, her tenancy was again extended to April 30.[2] Steven authorized the release of her contact information to a broker price

[1] OCROG concluded there was "insufficient evidence to support a finding" that Steven was subjected to "different terms and conditions of rental because of her race." CP at 979. It also found "no reasonable cause to believe that [FREO and Brink] engaged in an unfair housing practice due to [Steven's] race." *Id.*

With respect to the rent payments, OCROG found that "rental management had poor financial organization that resulted in error-ridden billing practices. However, the evidence does not indicate that race was a factor in their financial management." *Id.* at 978. Similarly, with respect to the repair issues, OCROG noted "excessive delays, miscommunications and partial repairs" but found that "similarly situated residents who are Caucasian . . . had equally serious repair needs . . . [and] were subjected to remarkably similar poor maintenance and repair actions." *Id.* at 979.

[2] Also in March, Steven won a judgment against FREO in small claims court for damages to the property, including a water stain and leak from the ceiling and nails protruding from the carpet.

opinion agent, and she contended that this authorization "negate[d] and cancel[ed]" the notice terminating her tenancy at the end of April. *Id.* at 893. Brink disagreed.

Steven also contended that she was being subjected to "different terms and conditions" and to retaliation because of the complaint she filed with OCROG. *Id.* at 905. Brink informed Steven, "The same requirements were given by the owners to all tenants at the same time with the same deadlines." *Id.* at 909. However, Brink sent Steven "multiple termination notices because of [her] requests for extensions and responses. This has nothing to do with retaliation." *Id.* at 910. The extensions granted to Steven were "not allowed . . . for any of [Brink's] other tenants." *Id.* Yet, Steven continued to maintain, "The reason I was not provided the offer price nor the calculation of the market price as promised to me . . . is due to me being subjected to different terms and conditions of the . . . tenancy and retaliation." *Id.* at 916.

On March 31, a broker notified Steven of the market value of the home and invited her to submit an offer. The tenancy was extended to May 31.

Steven again sent letters claiming disparate treatment and retaliation, in addition to new allegations that the property manager she had been corresponding with was "subjecting [her] to criminal harassment, intimidation and stalking." *Id.* at 925. Brink again responded that Steven had received the same notices as all other tenants, but unlike other tenants, she had been given several extensions to consider her options. It also rejected Steven's claims regarding its property manager. Steven was assigned a new point of contact.

On May 9, Tiffany Broberg, an attorney for Progress Residential (Progress), of which FREO is a wholly-owned subsidiary, sent a letter to Steven reiterating that she would be required to vacate the property by May 31. The letter stated, "You have received every opportunity (and

several more opportunities than other affected residents) to submit the required documentation and make an offer on the home, and have failed to do so. You will be required to vacate by May 31, 2016 so that the home can be sold." *Id.* at 952. Steven continued to contest this, arguing that the authorization to release her contact information canceled and negated the notice to vacate, and Broberg continued to insist that Steven was required to vacate by the end of the month.

Steven also filed another action in small claims court for diminution of rental value due to issues with the septic system and the yard. Broberg responded that FREO "would have a fair defense to the claim based on the vendor's claim that he was chased off the property when attempting to address the issues," but she nevertheless offered to settle Steven's claim with $1,500—so long as Steven released all other claims and vacated the property by May 31. *Id.* at 961.

On June 9, Steven remained on the property. FREO offered to let Steven remain on the property through the end of the school year—if she entered into an agreement that would dismiss her small claims suit with prejudice and "fully waive and forever bar any and all claims." *Id.* at 966. The proposed agreement stated, "The Parties hereby release and forever discharge the other Party . . . from any and all claims." *Id.* If Steven signed the agreement, she would be permitted to remain on the property until July 15.

Steven sent a counteroffer that, among other altered provisions, would only settle the pending action in small claims court and would not release any other claims against FREO. No agreements were signed, and Steven obtained a small claims judgment against FREO.

On June 24, FREO notified Steven that she would be required to vacate the property by July 31 and that if she failed to vacate by that date, eviction proceedings would be instituted. On August 1, Steven remained on the premises.

II. UNLAWFUL DETAINER ACTION

On August 1, FREO filed an eviction summons against Steven and a complaint for unlawful detainer, asking the court to issue a writ of restitution. On August 2, the superior court entered an order to show cause, requiring Steven to appear on August 12. On August 9, Steven retained Schroader as counsel.[3]

On August 15, Schroader received a declaration from Broberg in support of the writ of restitution. Broberg declared, "In December 2015, Progress (of which FREO is a wholly-owned subsidiary) decided to sell its entire portfolio of Washington houses (comprising 349 houses)." *Id.* at 67. She explained that this decision was based on the company's "investment parameters, which include the cost of doing business in Washington and the expected return on investment." *Id.* As a result of this decision, "[b]eginning in December 2015, each Progress homeowner provided notice to its Washington tenants of its plan to sell the houses." *Id.* After reviewing this declaration, Schroader determined that Steven was "not likely to prevail in her defense of retaliatory eviction," and he recommended that she settle. *Id.* at 58.

On August 16, the date of the show cause hearing, Schroader met with FREO's attorney and negotiated an agreement under superior court Civil Rule 2A (CR2A agreement). The agreement provided that Steven could remain on the property until September 15, 2016, that she

[3] The show cause hearing was continued from August 12 to August 16. Schroader was sanctioned because he did not appear on August 12 and his coverage counsel also did not appear.

would pay all outstanding rent by September 22, 2016, that FREO would pay its outstanding judgment from small claims court with interest, and that the parties would "bear their own fees and costs" from the litigation, except for the sanction imposed on Schroader for continuing the hearing. *Id.* at 104. The agreement also contained a provision stating, "The parties agree that this settlement resolves all disputes and claims, known or unknown, that exist or may exist concerning Steven's rental of the property." *Id.*

Finally, the agreement continued the show cause hearing until after September 15. If Steven fulfilled her obligations under the agreement, then FREO would dismiss the unlawful detainer action. If Steven failed to fulfill her obligations, including vacating the property by the agreed-upon date, then the parties agreed that FREO would be entitled to restitution of the property, any unpaid rent, and all costs and attorney fees from the litigation. Steven signed the agreement.

The day after she signed the agreement, Steven began to dispute its validity and informed Schroader that she did not want him to represent her any longer. Schroader filed a notice of intent to withdraw as Steven's attorney of record that day.

Steven retained another attorney and, on September 13, she filed a motion to revoke the CR2A agreement. Steven filed a declaration in support of the motion containing language nearly identical to what is being alleged now on appeal: "I was unaware of the significance of the CR2A Settlement Agreement and believe that Mr. Schroader did not adequately explain to me what I was agreeing to do." *Id.* at 130. Steven declared, "[Schroader] told me that I could still pursue my claim against FREO Washington, LLC for retaliation. Based upon his assurances, I signed the CR2A Settlement Agreement." *Id.* at 130-31.

Broberg submitted a supplemental declaration in support of the writ of restitution explaining that she was "extremely reluctant to agree that Ms. Steven could remain in the property through the middle of September 2016." *Id.* at 143. However, Broberg agreed to the settlement because it contained a waiver of claims provision. She stated, "Given Ms. Steven's litigious history, FREO considered this to be an essential provision in any settlement with her." *Id.*

At the show cause hearing on September 16, the superior court found that "[d]uring the August 16, 2016 show cause hearing, the Court directed the parties to discuss settlement. As a result of this discussion, the parties entered into a written settlement agreement . . . The Agreement expressly stated Steven's obligation to vacate the property by September 15, 2016." *Id.* at 76. The court noted that it was "allowing the CR2A to remain in effect," and it found Steven guilty of unlawful detainer. *Id.* at 74. It entered an order granting the writ of restitution and entitling FREO to costs and attorney fees.

In October, FREO moved the court for an order granting it costs and attorney fees, which amounted to over $20,000. Steven responded by attempting to argue that although the CR2A agreement was "fraudulent," FREO "did acknowledge and accept the obligations in the CR2A," which included the provision that the parties would bear their own costs and fees. *Id.* at 1285. The trial court entered a finding of fact stating that at the September 16 show cause hearing, "[t]he Court allowed Steven to argue her motion to vacate the Settlement. After listening to the arguments of counsel and considering the applicable law, the Court determined that no basis existed under CR 2A to vacate the Settlement." *Id.* at 763.

Although the superior court remarked that the "amount of fees shocks the [conscience]," it recognized that the CR2A agreement "specifically provides that in any action to enforce the

agreement's terms, the prevailing party will be entitled to recover its reasonable costs and attorney fees." *Id.* at 764-65. It granted FREO the requested costs and attorney fees, as well as past due rent.

In the fall of 2016, Steven sent multiple letters to Schroader detailing her complaints. She requested a refund of the majority of her retainer fee, claiming that Schroader "purposely attempted to sabotage [her] retaliation claim" and was "incompetent." *Id.* at 186.

She also filed grievances against Schroader and other attorneys involved in the case with the Washington State Bar Association (WSBA). The WSBA dismissed the bar complaint against Schroader, affirmed its dismissal, and eventually informed Steven that it would no longer be responding to any related correspondence.

Due to ongoing disagreement over the fees that Steven owed to Schroader, Schroader filed a breach of contract claim in small claims court in April 2017. Steven filed a counterclaim describing the lawsuit as "frivolous, baseless[,] and unfounded" and as an attempt to "derail [Steven's] legal malpractice lawsuit that [she was] going to be bringing." *Id.* at 1379. Steven stated that she was not waiving any legal malpractice claim by responding, and she requested that the court sanction Schroader and award her damages. The court ruled in Schroader's favor.

III. LEGAL MALPRACTICE ACTION

In July 2019, Steven filed a complaint for damages against Schroader alleging legal malpractice, breach of fiduciary duty, and a violation of the CPA.[4] In her complaint, Steven alleged that she was "unaware of the significance of the CR2A Settlement Agreement" and that Schroader "did not adequately explain . . . what she was agreeing to do." *Id.* at 7. Specifically, Steven claimed

[4] Steven does not argue her breach of fiduciary duty claim on appeal.

that the "wording in paragraph 6 of the CR2A did not include the word 'release' so [she] was unaware" that she was releasing all claims. *Id.* at 8. According to Steven, Schroader advised that this agreement would keep the sheriff from evicting Steven in a few days' time but Steven could still pursue her retaliation claim against FREO. "Based upon Defendant Schroader's assurances," she signed the agreement. *Id.* at 7.

Schroader filed a motion for summary judgment, arguing that (1) Steven's claims had already been adjudicated, (2) Schroader did not breach his duty, and (3) Steven failed to show that she sustained any damages as a result of the settlement agreement. Schroader argued that the claims had already been adjudicated because the superior court's orders upholding the CR2A agreement after reviewing Steven's motion to vacate resolved any question of whether or not Steven understood the agreement.

Schroader submitted a declaration in support of his motion, wherein he stated, "Upon receipt of [Broberg's declaration], it became clear to me that Paula Steven was not likely to prevail in her defense of retaliatory eviction against FREO. At that time, we discussed my opinion and I recommended settling the case on the most favorable terms possible." *Id.* at 58. He added, "My advice to [Steven] on the settlement agreement was clear: I told her I did not believe she would prevail on the issue of retaliatory eviction and upon entering in to the CR2A Agreement she would be forever barred from bringing retaliation as a claim or affirmative defense." *Id.* at 61-62.

Steven responded that her claim was not previously adjudicated because there was no final order or judgment on her motion to vacate the CR2A agreement and because the adjudication of the agreement "as it pertains to" FREO and the unlawful detainer action is distinct from an adjudication on the agreement "as it pertains to . . . Schroader" and the legal malpractice action.

Id. at 791. With respect to her legal malpractice claim, Steven made only general allegations, such as that Schroader "did not represent [her] with undivided loyalty nor did he disclose significant information to her" and that Schroader engaged in "misrepresentation and concealment." *Id.* at 790. She also stated, as an unsupported conclusion, that "[a]s a direct result of defendants' negligence, plaintiff has been damaged." *Id.*

Steven attached her letters to Schroader and the WSBA to her response. In a letter dated August 22, 2016, she stated that Schroader "guaranteed 100% that the eviction was due to retaliation and [that Steven] would get reimbursed all of the retainer fee in full." *Id.* at 1058. She also referenced promises to "refund a large portion of the retainer" and to provide "a discount" due to Schroader's failure to appear at the August 12 hearing. *Id.* Similar complaints and allegations were made in letters to Schroader dated August 24, August 30, September 6, and September 22. Similar complaints and allegations were also made in Steven's grievance that she submitted to the WSBA and in her letter asking that the WSBA review its dismissal of her grievance.

Steven did not attach a new sworn declaration in support of her response to Schroader's motion, but she attached her declaration in support of her motion to revoke the CR2A agreement, where she declared that she was "unaware of the significance of the CR2A Settlement Agreement," that "Mr. Schroader did not adequately explain . . . what [she] was agreeing to do," and that because "[t]he wording in paragraph 6 of the CR2A did not include the word 'release' . . . [she] was unaware of what was intended." *Id.* at 1210; 1211.

In his reply, Schroader reiterated his argument that all issues related to the unlawful detainer action had been previously adjudicated because "[w]hen the CR2A Agreement was ruled

valid, the King County Superior Court implicitly ruled upon Steven's Motion to Vacate, denying it." *Id.* at 1481. "But even if [this issue] had not been previously adjudicated, Steven's complete and utter lack of evidentiary support for her causes of action—despite requesting a lengthy continuance to procure that very evidence—means they cannot pass muster." *Id.* at 1480.

At the summary judgment hearing, Schroader first argued that Steven had previously litigated "the authenticity of the CR2A for not having been explained or understandable." Verbatim Report of Proceedings (VRP) at 5. Then, on the merits, he argued that Steven failed to present any evidence that he breached his duty of care or that a breach caused Steven any harm. He insisted, "Not only was Ms. Steven not going to win the underlying [unlawful detainer] case, she has presented no evidence she could have gotten a better settlement than Mr. Schroader got for her." *Id.* at 6.

Steven argued that genuine issues of material fact existed and that the issue of the CR2A agreement's validity was not estopped because the legal malpractice case "has different parties, different claims, and issues" than the underlying unlawful detainer case. *Id.* at 7. She also asserted, "But as far as my retaliation claims against FREO, I really believe that I would have prevailed. Mr. Schroader had told me that CR2A was to prevent me from being evicted and that I would need to deal with my retaliation claims at a different hearing." *Id.* at 9.

At the summary judgment hearing, the trial court stated that it did not believe the facts were disputed. It ruled, "even if [the issue of the CR2A agreement's validity] had not been adjudicated previously, which I believe it really has been, the plaintiff has come forward with no duty to this Court that the defendant has breached and that has resulted in any harm to the plaintiff. And I think that's abundantly clear." *Id.* at 10. The trial court granted Schroader's motion for summary

judgment.[5] It then entered a written order granting the motion and dismissing the claims against Schroader with prejudice. Steven appeals.[6]

ANALYSIS

Steven argues that the trial court erred in granting Schroader's motion for summary judgment based on collateral estoppel and that genuine issues of material fact remain regarding the causation and damages elements of her legal malpractice claim. She also argues that Schroader violated the CPA.[7] The trial court did not award summary judgment based on collateral estoppel,[8] and Steven fails to show a genuine issue of material fact to sustain her legal malpractice claim. She fails to show any injury or damages to support her CPA claim. Accordingly, we affirm.

I. SUMMARY JUDGMENT STANDARD

A motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no

[5] Steven also filed a motion to compel discovery, but the trial court did not reach this motion because its summary judgment ruling was dispositive.

[6] Steven moved the trial court for reconsideration, and the trial court denied her motion. Steven does not appeal the trial court's denial of her motion for reconsideration.

[7] Steven also briefly argues that she could not receive a fair trial in Pierce County Superior Court because (1) Schroader had previously appeared before Judge Stephanie Arend and Judge Arend "displayed a predisposition against Steven's position based upon her other experience with Schroader," and (2) Judge Arend was prejudiced against Steven based on her race and her pro se status. Opening Br. at 2. However, Steven does not raise judicial bias as an assignment of error or provide any further argument on this issue. Therefore, we decline to review this claim.

[8] Steven's assignment of error alleging that the trial court relied on collateral estoppel to grant Schroader's motion for summary judgment is not supported by the record. Although the trial court stated its belief that issues relevant to Steven's claim had already been adjudicated, it also stated that "*even if it had not been adjudicated previously*," Steven failed to show a breach of duty and resulting harm. VRP at 10 (emphasis added). The trial court's decision ultimately turned on the merits of Steven's claim, rather than on collateral estoppel.

genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c). When determining whether a genuine issue of material fact exists, we consider all the evidence in the light most favorable to the nonmoving party. *Vargas v. Inland Wash., LLC*, 194 Wn.2d 720, 728, 452 P.3d 1205 (2019).

If the defendant moves for summary judgment and shows "an absence of evidence to support the plaintiff's case," then the burden shifts to the plaintiff "to set forth specific facts that rebut the moving party's contentions and show a genuine issue of material fact." *Zonnebloem, LLC v. Blue Bay Holdings, LLC*, 200 Wn. App. 178, 183, 401 P.3d 468 (2017). The plaintiff "'may not rely on speculation, argumentative assertions that unresolved factual issues remain, or in having its affidavits considered at face value.'" *Martin v. Gonzaga Univ.*, 191 Wn.2d 712, 722, 425 P.3d 837 (2018) (quoting *Seven Gables Corp. v. MGM/UA Entm't Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986)). They must offer more than conclusory statements. *SentinelC3, Inc. v. Hunt*, 181 Wn.2d 127, 140, 331 P.3d 40 (2014).

If a reasonable person could reach only one conclusion based on the evidence presented, then summary judgment is proper. *Vargas*, 194 Wn.2d at 728. We review summary judgment orders de novo, "'engaging in the same inquiry as the trial court.'" *Id.* (quoting *Afoa v. Port of Seattle*, 176 Wn.2d 460, 466, 296 P.3d 800 (2013)). "We may affirm on any basis supported by the record." *Bavand v. OneWest Bank*, 196 Wn. App. 813, 825, 385 P.3d 233 (2016).

II. LEGAL MALPRACTICE CLAIM

Steven argues that Schroader's legal advice caused her damage. Steven describes it as a "'given'" that Schroader's advice was negligent, seemingly because Schroader knew that Steven believed she was being retaliated against but still advised that she sign the settlement agreement.

Opening Br. at 36. Steven also asserts, without explanation, that she "is confident that after a hearing on the merits, that the court would have recognized her defense of retaliation . . . and would have dismissed the unlawful detainer[ ] action against her." *Id.* at 16. She describes her damages as what she "would have been awarded in the retaliation lawsuit, eviction costs, rent increase cost, anticipatory breach, punitive, and [treble] damages, and other [foreseeable] costs." *Id.* at 40. Because Steven presents only conclusory statements in support of her claim, we affirm the trial court's order granting summary judgment.

A. LEGAL PRINCIPLES

1. LEGAL MALPRACTICE

To succeed on a claim of legal malpractice, the plaintiff must prove four elements: "'(1) . . . an attorney-client relationship which gives rise to a duty of care . . . ; (2) an act or omission by the attorney in breach of the duty of care; (3) damage to the client; and (4) proximate causation between the attorney's breach of the duty and the damage incurred.'" *Schmidt v. Coogan*, 181 Wn.2d 661, 665, 335 P.3d 424 (2014) (internal quotation marks omitted) (quoting *Ang v. Martin*, 154 Wn.2d 477, 482, 114 P.3d 637 (2005)).

To determine whether the causation element has been satisfied, the trier of fact must conduct "a trial within a trial" and "decide if the underlying cause of action would have resulted in a favorable verdict for the client; *only then is the suit against the attorney viable*." *Slack v. Luke*, 192 Wn. App. 909, 916, 370 P.3d 49 (2016) (emphasis added). In *Slack*, Division Three held that once the defendant attorney offered evidence showing that the plaintiff's underlying claim was without merit, then the burden shifted to the plaintiff to show that her case would have survived

summary judgment. *Id.* at 919. "There is no reason to require a useless trial in a malpractice action involving a meritless underlying case." *Id.*

Relatedly, when a plaintiff claims legal malpractice on a tort theory of attorney negligence, the damages are calculated to ensure that the plaintiff is "made whole without conferring a windfall." *Shoemake v. Ferrer*, 168 Wn.2d 193, 198, 225 P.3d 990 (2010). "Because damages are intended to place the plaintiff in as good a position as she would have been had the tort not occurred," the reviewing court necessarily considers what would have occurred in the underlying case, had the attorney not performed negligently. *Id.*

2. RETALIATORY EVICTION AND UNLAWFUL DETAINER

It is illegal for a landlord to evict a tenant if the eviction is "intended primarily to retaliate against a tenant because of the tenant's good faith and lawful act." RCW 59.18.240(2), (2)(a). RCW 59.18.250 creates a rebuttable presumption that an eviction is retaliatory if it is initiated within 90 days of the tenant making a report to a governmental authority or within 90 days of a governmental agency's resulting investigation. But where a lease term simply expires, and the lease therefore terminates as a matter of law, this presumption does not apply. *Carlstrom v. Hanline*, 98 Wn. App. 780, 787, 990 P.2d 986 (2000). Additionally, so long as the landlord provides proper 20-day notice, they can terminate a month-to-month tenancy without providing any justification or reason. *Leda v. Whisnand*, 150 Wn. App. 69, 77-78, 207 P.3d 468 (2009).

It is unlawful for a tenant to remain on a property after the termination of their rental agreement. RCW 59.18.290(2).[9] If a tenant unlawfully remains, then the landlord "may recover

[9] RCW 59.18.290 was amended in 2020, but the amendments do not impact this appeal.

possession of the property and damages sustained by him or her, and the prevailing party may recover his or her costs of suit . . . and reasonable attorneys' fees." *Id.*

B. APPLICATION

To succeed on her legal malpractice claim, Steven must show that she would have succeeded in a future retaliation claim or on her underlying unlawful detainer action. *Slack*, 192 Wn. App. at 916. Steven fails to bring forth any evidence to make this showing.

Although Steven filed a fair housing complaint with OCROG and several actions in small claims court against FREO, the unrebutted evidence in the record is that FREO determined its Washington properties were no longer a worthwhile investment and decided to sell *all* of them. Therefore, FREO's termination of Steven's tenancy had nothing to do with her as an individual tenant. Given this fact, Steven could not show that her eviction was "intended primarily to retaliate" against her for asserting her legal rights. RCW 59.18.240(2).

Moreover, Steven's lease expired as a matter of law on January 31, 2016, and it would have expired on that date regardless of whether or not Steven filed complaints against FREO and Brink. By the time the unlawful detainer action was filed against her, Steven was a month-to-month tenant who had been served with proper notice that she needed to vacate the property. No further justification was necessary. *Leda*, 150 Wn. App. at 77-78.

Steven fails to show that her retaliation claim was meritorious and, therefore, Schroader did not commit legal malpractice when he advised Steven to sign a settlement agreement that included a term releasing her retaliation claim against FREO. Even if we view the facts in the light most favorable to Steven, assume that she can no longer raise a retaliation claim, and assume that

she failed to understand the impact of the CR2A agreement when she signed it, this conclusion remains the same.

Because Steven could not have prevailed on her retaliation claim, Schroader's advice could not have caused her any damage. To the contrary, the negotiated settlement spared Steven from paying statutorily mandated costs and attorney fees, and it enabled Steven to remain in her residence for an additional month. Steven fails "to set forth specific facts that rebut the moving party's contentions and show a genuine issue of material fact." *Zonnebloem,* 200 Wn. App. at 183. The trial court properly granted Schroader's motion for summary judgment.

III. CONSUMER PROTECTION ACT

Steven also argues that Schroader engaged in an unfair and deceptive business practice because he billed Steven for a paralegal's time, but he did not keep the required employment records for the paralegal.[10] A CPA claim requires the plaintiff to show an "'(1) unfair or deceptive act or practice; (2) occurring in trade or commerce; (3) public interest impact; (4) injury to plaintiff in his or her business or property; [and] (5) causation.'" *Klem v. Wash. Mut. Bank,* 176 Wn.2d 771, 782, 295 P.3d 1179 (2013) (quoting *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 780, 719 P.2d 531 (1986)). Steven fails to show how she was injured by Schroader's inadequate employment records. Therefore, the trial court also properly dismissed her CPA claim.

[10] The Department of Labor and Industries conducted an audit in response to Steven's allegation that Schroader's firm was an unregistered employer, and Schroader paid the penalties imposed.

CONCLUSION

Steven fails to show any genuine issues of material fact that would preclude summary judgment. We therefore affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

CRUSER, J.

We concur:

WORSWICK, J.

LEE, C.J.