No. 27418-7-III

Schultheis, C.J. (dissenting) — Cherry Lane Auto Plaza, Inc. completed and signed an odometer disclosure statement that certified the mileage of the truck it sold to Rob Quinn was accurate based only on the odometer reading. No attempt was made to look at any other resources available to the dealership, which would have revealed that the truck's odometer had been replaced and reflected a mileage of about one-third of the truck's actual mileage. The dealership's practice of merely recording the odometer reading when certifying mileage to be accurate without checking other resources available to the dealership violates federal statutes as a matter of law. Moreover, the dealership violated state statutes when it failed to inform Mr. Quinn at the time he entered into the sales contract that the odometer was replaced and when it misrepresented the actual mileage.

The majority holds that determinations to the contrary were made by the trier of fact based on its appraisal of the evidence, credibility of the witnesses, and the facts it chose to find. Mr. Quinn did not dispute the factual findings—the persuasiveness of the evidence and credibility of the witnesses are unimportant to the legal issue of whether the

statutes were violated. Because the issues in this case must be resolved by interpreting and applying statutes to undisputed facts, the issues are most appropriately resolved by this court as a matter of law. I must therefore respectfully dissent.

Standard of Review

The trial court made exhaustive findings of fact, which Mr. Quinn does not challenge. This court reviews de novo the trial court's interpretation and application of a statute to undisputed facts. *Heller v. McClure & Sons, Inc.*, 92 Wn. App. 333, 337, 963 P.2d 923 (1998).

Federal Odometer Act

The federal odometer act provides for a private cause of action against a person transferring ownership of a vehicle who, "with intent to defraud," gives a false statement to the transferee in making a required odometer disclosure. 49 U.S.C. §§ 32710, 32705(a)(2). When we construe a federal statute, we start with the plain language of the statute to determine congressional intent, including its object and policy. *Dole v. United Steelworkers of Am.*, 494 U.S. 26, 35, 110 S. Ct. 929, 108 L. Ed. 2d 23 (1990). This court is bound by the construction of a federal statute placed upon it by the Supreme Court of the United States. *S.S. v. Alexander*, 143 Wn. App. 75, 92, 177 P.3d 724 (2008) (quoting *N. Pac. Ry. Co. v. Longmire*, 104 Wash. 121, 125, 176 P. 150 (1918)). We have

greater latitude when analyzing a decision of a federal appellate court, which is entitled to great weight but is not binding if we deem it illogical or unsound. *Id*. (citing *Home Ins. Co. of N.Y. v. N. Pac. Ry. Co*., 18 Wn.2d 798, 808, 140 P.2d 507 (1943)).

The federal odometer act is remedial legislation that should be "broadly construed to effectuate its purpose." *Ryan v. Edwards*, 592 F.2d 756, 760 (4th Cir. 1979). The act is aimed at not only preventing odometer tampering and odometer fraud, but to provide safeguards to protect purchasers in the sale of motor vehicles with altered or reset odometers.[1] 49 U.S.C. § 32701(b). "[T]he Act is intended to prohibit the giving of false odometer statements even by those who had nothing to do with changing the odometers." *Tusa v. Omaha Auto. Auction, Inc.*, 712 F.2d 1248, 1252 (8th Cir. 1983).

Moreover, based on the legislative history of the disclosure legislation, "Congress clearly wanted each transferor to prepare as accurate a disclosure statement as possible, even if the person had no role in odometer tampering." *Id*. This means that a dealership's employees must use those materials at the transferor's disposal. "Mere

[1] As a preface to the expression of purpose, Congress made the following findings: "(1) buyers of motor vehicles rely heavily on the odometer reading as an index of the condition and value of a vehicle; (2) buyers are entitled to rely on the odometer reading as an accurate indication of the mileage of the vehicle; (3) an accurate indication of the mileage assists a buyer in deciding on the safety and reliability of the vehicle; and (4) motor vehicles move in, or affect, interstate and foreign commerce." 49 U.S.C. § 32701(a).

reliance on the odometer reading, in the face of other readily ascertainable information . . . constitutes a reckless disregard that rises to the level of intent to defraud, as a matter of law." *Aldridge v. Billips*, 656 F. Supp. 975, 978-79 (W.D. Va. 1987).

In this case, the dealership provided a disclosure statement certifying the mileage of the vehicle being sold was 26,814, which was signed by Tim McKenna as an agent of the dealership. This mileage is incorrect. The trial court concluded that Mr. McKenna and the dealership were each transferors under 49 U.S.C. § 32710, and therefore potentially subject to liability under the federal odometer act.[2] But the trial court also concluded that Mr. McKenna and the dealership, in certifying the disclosure statement, did so without an intent to defraud Mr. Quinn, and had neither actual nor constructive knowledge that the odometer was inaccurate at the time the odometer statement was completed.

The vast majority of courts that have addressed the intent to defraud requirement

[2] A transferor is "any person who transfers his ownership of a motor vehicle by sale, gift, or any means other than by the creation of a security interest, and any person who, as agent, signs an odometer disclosure statement for the transferor." 49 C.F.R. § 580.3. Although not specifically stated in its findings and conclusions, the court implicitly found that Mr. Quinn was a transferee. *See* 49 C.F.R. § 580.3 (providing that a transferee is "any person to whom ownership of a motor vehicle is transferred, by purchase, gift, or any means other than by the creation of a security interest, and any person who, as agent, signs an odometer disclosure statement for the transferee"). In any event, the dealership does not claim Mr. Quinn is not a transferee.

of 49 U.S.C. § 32710 have rejected a construction of the statute that would require proof of actual knowledge. *Auto Sport Motors, Inc. v. Bruno Auto Dealers, Inc.*, 721 F. Supp. 63, 65 (S.D.N.Y. 1989) (citing cases). Instead, though a showing of mere negligence is insufficient, the intent to deceive may be shown by constructive knowledge, recklessness, or gross negligence in determining and disclosing actual mileage.[3] *Ryan*, 592 F.2d at 762.

The trial court in this case found that Mr. McKenna had no actual knowledge of the mileage discrepancy when he signed the odometer disclosure statement, and had no knowledge of the previous problems associated with the vehicle's instrument cluster. The trial court acknowledged that the intent to deceive can be proven through recklessness or gross negligence. But it held that under the facts, "This conduct is clearly not within the

[3] *E.g. Suiter v. Mitchell Motor Coach Sales, Inc.*, 151 F.3d 1275, 1282 (10th Cir. 1998); *Tusa*, 712 F.2d at 1253; *Diersen v. Chicago Car Exch*., 110 F.3d 481, 488 (7th Cir. 1997); *Nieto v. Pence*, 578 F.2d 640, 642 (5th Cir. 1978). State courts that have examined this issue have followed suit. *E.g. Hinson v. Eaton*, 322 Ark. 331, 908 S.W.2d 646, 647-49 (1995); *Spencer v. Dupree*, 150 Ga. App. 474, 258 S.E.2d 229, 231-32 (1979); *Buechin v. Ogden Chrysler-Plymouth, Inc.*, 159 Ill. App. 3d 237, 253, 111 Ill. Dec. 35, 511 N.E.2d 1330 (1987); *Stepp v. Duffy*, 654 N.E.2d 767, 772-73 (Ind. Ct. App. 1995); *Molo Oil Co. v. River City Ford Truck Sales, Inc*., 578 N.W.2d 222, 226 (Iowa 1998); *Werdann v. Mel Hambelton Ford, Inc.*, 32 Kan. App. 2d 118, 79 P.3d 1081, 1090 (2003); *DeLong v. Hilltop Lincoln-Mercury*, *Inc.*, 812 S.W.2d 834, 845 (Mo. Ct. App. 1991); *Kerr v. A & G Auto, Inc.*, 2000 OK CIV APP 6, 996 P.2d 483, 486; *Carroll Motors, Inc. v. Purcell*, 273 S.C. 745, 259 S.E.2d 604, 606 (1979); *Christianson v. Lease Assocs., Inc.*, 87 Wis. 2d 123, 273 N.W.2d 776, 778 (Ct. App. 1978); *Harden v. Gregory Motors*, 697 P.2d 283, 287 (Wyo. 1985). *See also* 7A Am. Jur. 2d *Automobiles* § 197 (citing cases).

category of recklessness or gross negligence." Clerk's Papers (CP) at 51. This is an erroneous conclusion under the undisputed facts of this case.

The dealership's "internal computer records and a hand written [sic] inventory in the deal jacket for the vehicle documented the correct mileage for the vehicle, but this information was not accessible to the sales staff, according to Cherry Lane internal business practices." CP at 79 (finding of fact 17). And it is a common industry standard for such internal documents to be inaccessible to sales people. Mr. McKenna relied on the mileage provided by the salesman, which the salesman obtained from the odometer, for the purposes of certifying the mileage. It is also a common industry standard to determine accurate mileage for the purpose of the odometer disclosure statement by simply looking at the odometer.

Such practices, regardless of their popularity, render the odometer act and its regulations meaningless. Significantly, 49 C.F.R. § 580.5(e)(3), states:

> If the transferor knows that *the odometer reading differs from the mileage and that the difference is greater* than that caused by odometer calibration error, he shall *include a statement that the odometer reading does not reflect the actual mileage*, and should not be relied upon. This statement shall also *include a warning notice* to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage.

(Emphasis added.)

A transferor cannot satisfy the obligation to disclose and warn the transferee of

potential odometer irregularities by merely looking at the odometer and disregarding other relevant information. *See* 49 C.F.R. § 580.5(e)(2)-(3). Indeed, "The federal odometer law imposes an affirmative duty on automobile dealers to discover defects." *Haynes v. Manning*, 917 F.2d 450, 453 (10th Cir. 1990); *Stepp v. Duffy*, 654 N.E.2d 767 (Ind. Ct. App. 1995). In this context, intent to deceive or reckless disregard for the accuracy of the disclosure can be established as a matter of law. *E.g.*, *Aldridge*, 656 F. Supp. at 978 -79.

Moreover, the credibility determinations made by the trial court relate to Michael Lilley's intent that the truck not be sold until the instrument cluster was installed and the odometer adjusted, Mr. McKenna's discussions with Mr. Quinn after the misrepresentation was discovered, and the negotiations regarding the purchase of the truck as it relates to Mr. Quinn's trade-ins. None of these facts has any bearing on the diligence required by the transferor when certifying the accuracy of mileage on the odometer statement. The odometer act requires more than merely recording the odometer reading.

For instance, in *Nieto v. Pence*, 578 F.2d 640, 641 (5th Cir. 1978), the court held that the dealer should have checked the box on the disclosure statement that stated, "'I further state that the actual mileage differs from the odometer reading for reasons other

than odometer calibration error and that the actual mileage is unknown.'" This is true even though two previous dealers certified the odometer reading as 14,290 miles, and failed to certify that the actual mileage was unknown. The dealer should have known, and was required to disclose, that the mileage was unknown.

It was irresponsible for the dealership in this case to institute a practice to dummy-down the sales staff—the very people making representations to potential buyers—by limiting the sales staff's access to materials that would enable them to make accurate representations. It is disingenuous for the dealership to then complain that it cannot be held liable for the lack of information available to its sales staff. The fact that this practice is common in the trade only shows an industry pattern of creating a loophole to avoid liability.

Moreover, neither the trial court's findings nor the acceptance of this practice explains why the "deal jacket" or computer files that contained the pertinent odometer information were not examined by the individual signing the odometer disclosure statement, Mr. McKenna, who was both the finance manager and the acting general manager of the dealership in Mr. Lilley's absence. As aptly said by one court, "One may not consciously avoid learning that the true mileage of a vehicle is not as it appears on the odometer." *Auto Sport Motors*, 721 F. Supp. at 66. *See Suiter v. Mitchell Motor Coach*

Sales, Inc., 151 F.3d 1275, 1282 (10th Cir. 1998) (holding that a transferor who has reason to know that the odometer reading is inaccurate, based on readily ascertainable information in the chain of title, cannot close his eyes to the truth); *Haynes*, 917 F.2d at 453.

The trial court found that, given the good condition of the Silverado, an odometer reading of 26,814 miles would not be enough to raise suspicion that the mileage was inaccurate. Courts have imputed an intent to deceive when dealers should have been suspicious of the mileage based on the vintage and condition of the vehicle. *Nieto*, 578 F.2d 640. Regardless of the condition of the Silverado, the odometer act requires more of a transferor than to merely look at the odometer when certifying mileage. 49 C.F.R. § 580.5(e)(3). This point is well illustrated in *Jones v. Fenton Ford, Inc*, 427 F. Supp. 1328, 1336 (D. Conn. 1977).

In *Jones* the court rejected the dealership's claim that the failure to inform the buyer of an odometer irregularity was an innocent clerical error. 427 F. Supp. at 1332, 1335. The dealership explained at trial that an inexperienced office worker misfiled the original odometer statement signed by the prior owner, so that any subsequent reference to the file would not reveal that there was a problem with the car's mileage. *Id*. at 1332. The absence of the odometer disclosure statement in the file "should have led the

individual charged with certifying the new [odometer disclosure statement] to launch an inquiry into the true facts." *Id*. at 1335.

The court noted the affirmative duty upon automobile dealers to discover defects and concluded that "[i]t is no defense to assert that defects in the design or supervision of the dealership's record-keeping system were responsible for the misrepresentation in this case." *Id*. at 1336. The court emphasized that "[w]hat is more important . . . is that the maintenance of a thorough, well-supervised record-keeping system with respect to [odometer disclosure statements] is a clear, implicit requirement of the [odometer act]." *Id*. The court suggested that at a minimum the dealership require "that sales personnel read and accurately represent to prospective purchasers the content of an automobile's file, and that [odometer disclosure statements] be certified only upon the basis of back-up information actually available in the file." *Id*.

The *Jones* court pointed out that fraudulent intent for the purpose of imposing civil liability, may be proved when a defendant's statements were made "recklessly or carelessly, without knowledge of their truth or falsity, or without reasonable grounds for belief in their truth." *Id*. at 1334.

Here, the trial court found that at the time of the transaction, Mr. McKenna had access to the documentation on the correct mileage. The trial court nonetheless did not

find significant the fact that Mr. McKenna did not even look at the file regarding the Silverado. Instead, the trial court implicitly held that the federal odometer act requires no more of the transferor when certifying the mileage to accept secondhand information that the mileage to be accurate based on the odometer reading. This is incorrect as a matter of law. *See Terry v. Whitlock*, 102 F. Supp. 2d 661, 662-63 (W.D. Vir. 2000); *Aldridge*, 656 F. Supp. 975.

The trial court here further found that Mr. Quinn did not request independent verification of the vehicle's mileage. And the dealership points out that Mr. Quinn never questioned the miles on the vehicle that might have prompted Mr. McKenna to inquire further. Mr. Quinn is not the party obligated under the odometer act. The transferee has a right to rely on the accuracy of the odometer disclosure statement as certified by the transferor. In effect, the disclosure statement is meant to be verification of the accuracy of the odometer reading.

It is unfortunate that Mr. Lilley suffered a heart attack. Had he not been absent from work, the misrepresentation might not have occurred. But Congress mandated the institution of standardized record-keeping procedures. 49 U.S.C. § 32706. Dealerships must retain for five years odometer mileage statements that they issue and receive "in an order that is appropriate to business requirements and that permits systematic retrieval."

49 C.F.R. § 580.8(a). The fact that such illnesses occur only reinforces the need for Mr. Lilley to establish adequate control systems. The trial court's findings establish that such controls were fundamentally lacking at the dealership in this case. While errors can occur in even the best-managed record-keeping systems, the facts here do not present a close case. *Jones*, 427 F. Supp. at 1336.

Auto Dealer Practices Act

Mr. Quinn asserts that the dealership violated provisions of the Washington auto dealer practices act, chapter 46.70 RCW, entitling him to relief under this statute as well as the Consumer Protection Act, chapter 19.86 RCW. I agree that two violations occurred, which triggered relief under both acts.[4]

First, Mr. Quinn claims violations of the dealer practices act by the dealership's contravention of the odometer repair and replacement statute. *See* RCW 46.70.180(5).

RCW 46.37.560 makes it unlawful "for any person to *sell a motor vehicle* in this state if such person has *knowledge* that the odometer on such motor vehicle has been

[4] RCW 46.70.027 provides a cause of action for "[a] retail purchaser . . . who has suffered a loss or damage by reason of any act by a dealer, salesperson, managerial person, or other employee of a dealership, that constitutes a violation of [the dealer practices act] . . . for recovery against the dealer and the surety bond as set forth in RCW 46.70.070." Further, "Any violation of [chapter 46.70 RCW] is deemed to affect the public interest and constitutes a violation of chapter 19.86 RCW [the Washington Consumer Protection Act]." RCW 46.70.310.

replaced with another odometer and if such person fails to notify the buyer, prior to the time of sale, that the odometer has been replaced or that he believes the odometer to have been replaced." (Emphases added.)

The trial court found that finance manager/acting general manager "Mr. McKenna had no actual knowledge of the mile discrepancy when he signed the odometer disclosure statement, and had no knowledge of the previous problems associated with the vehicle's instrument cluster" when he allowed Mr. Quinn to take possession of the Silverado. CP at 81 (finding of fact 26). The trial court therefore concluded that the dealership did not violate the state odometer statutes because "Cherry Lane, its agents and employees did not have either actual or constructive knowledge of the odometer discrepancy or an intent to defraud by offering the vehicle for sale." CP at 84. The trial court did not properly apply the statute.[5] Mr. Lilley's knowledge of the odometer replacement is dispositive.

As a dealer, Mr. Lilley "is accountable for the dealer's employees, sales personnel,

[5] Mr. Quinn argues that the language "knowledge or intent to defraud" in the court's conclusion shows that the trial court misconstrued the state statutes and imposed an intent requirement to go along with the knowledge element. The dealership argued before the trial court (and continues to argue on appeal) that all the statutes in the dealer practices act are triggered only upon a finding of deceitful motivation. It does not appear that the trial court fully adopted the dealership's view. The relevant conclusion uses "or" to separate knowledge and intent to defraud. Obviously, if Mr. Quinn had shown that there was an intent to defraud, knowledge would also logically be present. The surplus language is unnecessary, but not necessarily significant.

and managerial personnel while in the performance of their official duties." RCW 46.70.027. Mr. Lilley knew that the odometer had been replaced. The dealership and its employees sold the Silverado in that condition.[6] Mr. Lilley is responsible for the sale being made when he knew that the odometer was replaced and the buyer was not so informed. RCW 46.37.560.

The trial court further concluded that, because the sales transaction was not complete, the dealership did not "sell a motor vehicle" as is required to trigger a violation under RCW 46.37.560. The trial court used contract principles to determine whether a sale had occurred. This is an issue of statutory construction.

If a statute's meaning is plain on its face, then we must give effect to that plain meaning. *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). Under the plain meaning rule, such meaning is derived from all that the legislature has said in the statute and related statutes that disclose legislative intent about the provision in question. *Id*. at 11-12. We construe statutes to effect their purpose and

[6] The statute makes it unlawful for "any *person* to sell a motor vehicle" when "such *person* has knowledge" that the odometer has been replaced and does not disclose it to the buyer. RCW 46.37.560 (emphasis added). Included in the definition of person is "every natural person, firm, copartnership, corporation, association, or organization." RCW 46.04.405; *see* RCW 46.04.010 (providing that terms defined in chapter 46.04 RCW apply to the terms used in Title 46 RCW unless they are otherwise specifically defined).

avoid unlikely or absurd results. *State v. Neher*, 112 Wn.2d 347, 351, 771 P.2d 330 (1989).

RCW 46.37.560 makes it unlawful "to sell a motor vehicle" when the dealer has knowledge that the odometer has been replaced and does not disclose it to the buyer. The term "sell" is not defined within the statute. When a word has a well-accepted, ordinary meaning, we turn to a regular dictionary for its meaning. *City of Spokane ex rel. Wastewater Mgmt. Dep't v. Dep't of Revenue*, 145 Wn.2d 445, 454, 38 P.3d 1010 (2002). Here, the dictionary provides seven definitions for "sell" as a transitive verb as it is used in this context. *See* Webster's Third New International Dictionary at 2061 (1993). It is therefore not particularly helpful.

In enacting the statutory scheme, the legislature found that "the distribution, sale, and lease of vehicles in the state of Washington vitally affects the general economy of the state and the public interest and the public welfare." RCW 46.70.005. Therefore, regulations were needed "in order to promote the public interest and the public welfare . . . and . . . in order to prevent frauds, impositions, and other abuses upon its citizens and to protect and preserve the investments and properties of the citizens of this state." RCW 46.70.005. The legislature required that the provisions of the dealer practices act "shall be liberally construed to the end that deceptive practices or commission of fraud or

misrepresentation in the sale, lease, barter, or disposition of vehicles in this state may be prohibited and prevented." RCW 46.70.900.

Given the legislature's broad concerns and mandate that the legislation be afforded liberal construction to the end of preventing any type of misrepresentation, it is proper to define "sell" broadly and liberally to include contracting for a sale, which occurred here. It is not reasonable to conclude that the legislature meant for a car dealer to avoid the reach of the law merely because the sale of a misrepresented vehicle had not fully concluded. This is especially true in this case where the dealership took affirmative action to invalidate the transaction by recalling the financing.

The trial court also concluded that the dealership did not "sell" the car as required by RCW 46.37.560 because the sales contract was not fully integrated and the sale was not consummated because performance was not complete, which required consideration and conditions precedent. Alternatively, the court concluded that there was a mutual rescission of the sales contract. These contractual defenses are wholly irrelevant to this statutory claim. Mr. Quinn is "[a] retail purchaser . . . who has suffered a loss or damage by reason of any act by a dealer, salesperson, managerial person, or other employee of a dealership, that constitutes a violation of this chapter . . . [and] may institute an action for recovery against the dealer."[7] RCW 46.70.027, .070(1). I would hold that Mr. Quinn

[7] The dealership does not claim that Mr. Quinn is not a "retail purchaser" under

may recover such losses or damages.

It is particularly unreasonable to excuse the dealership's misrepresentation here on its claim that Mr. Quinn did not fully perform when the dealership's performance was complete and included the offending misrepresentation. To hold otherwise would create a loophole, encouraging dealers to craft their sales contracts to take advantage of and avoid responsibility under the dealer practices act. This would dishonor the legislative mandate to construe liberally the provisions of the act to prevent misrepresentation.

If the legislature wished to limit the definition of sell to mean that the contractual obligations of the parties had been met, it would have done so. In fact, a statute within the dealer practices act so limited the definition of "delivery" of a mobile home within the act to require that "[t]he contractual obligations between the purchaser and the seller have been met." RCW 46.70.135(5).

Moreover, by including in its purpose the desire to prevent "impositions . . . upon the citizens," Mr. Quinn is a member of the class of persons the statute was meant to

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RCW 46.70.070(1). The term "purchaser" is not defined by the statute. Nonetheless, that term should be similarly broadly defined. *See also* RCW 46.70.180 (using the terms "prospective purchaser" and "purchaser" interchangeably, as well as the terms "prospective buyer" and "buyer"); *Brittingham Leasing Corp. v. Szymanski*, 53 Wn. App. 251, 256, 766 P.2d 495 (1989) (holding that a retail purchaser is a buyer who is the final user of the goods, as distinguished from a middleman or a purchaser who plays a wholesaler role).

protect. RCW 46.70.005. The events that unfolded were caused by the dealership's misrepresentation of the mileage on the vehicle Mr. Quinn purchased and made worse by the dealership's recall of the financing and repossession of the Silverado, which actions the dealership evidently believed would permit it to avoid responsibility under the law.

Mr. Quinn also asserts that the dealership violated RCW 46.70.180(2)(a) by falsely representing in the sale agreement that the Silverado had 26,814 miles when it did not. Although Mr. Quinn raised this issue in his trial brief, the trial court did not directly address it in its memorandum decision or findings of fact and conclusions of law. Instead, the court concluded that Mr. Quinn "failed to prove a violation by preponderance of the evidence of the Dealer Practices Act and has likely failed to prove by the requisite degree of proof any violations of the Washington State Protection Act." CP at 100.

The sale agreement sets forth that the odometer reading is 26,814 miles. The true mileage was 84,901. The sales agreement incorporated into its terms a falsely represented mileage, which subjected the dealership to liability under RCW 46.70.180(2)(a) of the dealer practices act. *See* RCW 46.70.027.

Attorney Fees

Finally, I would grant Mr. Quinn his attorney fees and costs on appeal under the dealer practices act, Consumer Protection Act, and federal odometer act. RCW

46.70.190, RCW 19.86.090, 49 U.S.C. § 32710. *See* RAP 18.1; *State v. Farmers Union Grain Co.*, 80 Wn. App. 287, 296, 908 P.2d 386 (1996).

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Schultheis, C.J.